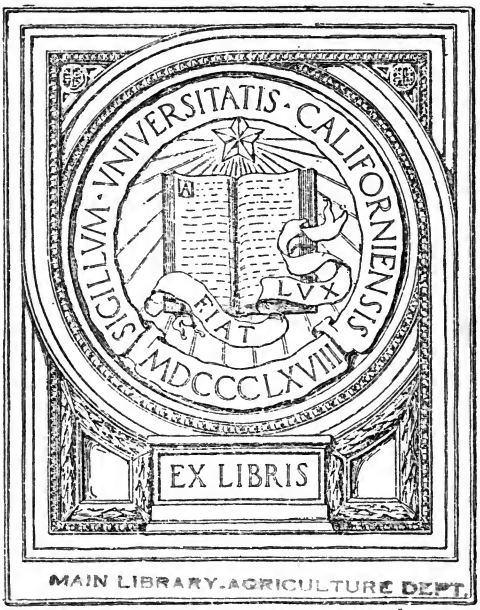

# THE TORRENS SYSTEM

## ITS SIMPLICITY, SERVICEABILITY AND SUCCESS

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# PREFATORY NOTE

THIS discussion of the Torrens System appeared as a series of articles in *The Wall Street Journal*. Requests have come from many parts of the United States for their collection in permanent form. Because of this and of the attention now directed to the Torrens idea the articles are reproduced in this book.

No legal or economic principle is of greater moment than the system known as the Torrens. It interests every owner of property, without exception, every lawyer and every financier who may soon see real estate become an asset as liquid as other factors of wealth upon which banks are expected to loan funds.

Eleven of the United States have already adopted, in whole or in part, the Torrens System. It has been proved to be of increasing benefit to the owners of property and of homes. In many States coming sessions of the legislatures will prepare to take action looking to the adoption or the perfection of systems of conveyancing and the passage of Torrens Acts. The bitter opposition of vested interests to the enactment of such legislation, the nation-wide demand for simplification of the processes of conveyancing, the need of abolishing antiquated methods of land transfers, and the appreciation of the negotiable qualities of land values make the subject of this discussion of paramount importance. Knowledge of the conditions surrounding the Torrens principle is of vital interest to the smallest as to the largest holder of real estate.

No attempt has been made to give a bibliography of Torrens material aside from works mentioned in the text. The catalogue of the subject is so large and includes development in so many countries that a list of articles, addresses, reports, and works upon the Torrens idea would unduly add to this little volume.

Besides the authors from whom I have liberally quoted, I am under particular obligations to Walter Fairchild, Esq., Special Deputy Register of New York County, for his able suggestions in connection with matters treated in the following pages. I express my thanks to these and to others who have furnished me with data included in this exposition of a simple and sound system of land transfer procedure which, by its inherent excellence, its successful practice, and its beneficial and universal effects, is as assured of adoption in this practical and efficiency-seeking nation as it has proved its immense value in almost every part of the civilized globe.

A. Guyot Cameron.

# CONTENTS

# THE TORRENS SYSTEM

## ITS SIMPLICITY, SERVICEABILITY, AND SUCCESS

## I

Approval by the Real Estate Board of New York of the Torrens System of recording titles to real estate is comparable in importance with the passing of the law itself. A committee of the board has been engaged for some time in the investigation of the practicality and benefit of the law. This committee was composed of legal and real-estate experts and representatives of the title companies. Interest in the report of the committee lies in the fact that hitherto title companies have been bitterly opposed to the Torrens System.

Expert opinion

The committee reports that the Torrens System is right, feasible, and constitutional and that the benefits under the law are such as to make it desirable.

One committee is to prepare amendments to the existing statutes without regard to any possible constitutional amendment and another committee will study the advisability of constitutional amendment.

It may safely be said that no realty reform equals this in importance. Definition of the system is given by its creator, Sir Robert Richard Torrens, who started it in Australia: —

Torrens System defined

> The person or persons in whom singly or collectively the fee-simple is vested, either at law or in equity, may apply to

have the land placed on the register of titles. The applications are submitted for examination to a barrister and to a conveyancer, who are styled "examiners of titles." These gentlemen report to the register: First. Whether the description of land is definite and clear. Second. Is the applicant in undisputed possession of the property? Third. Does he appear in equity and justice rightfully entitled thereto? Fourth. Does he produce such evidence of title as leads to the conclusion that no other person is in position to succeed against him in an action for ejectment?

The advantage of the system lies in the simplicity of registration. A certificate is issued describing the nature of the estate of the applicant and this certificate of title vests the estate indefeasibly in the applicant. This certificate of title is kept in duplicate by the registrar and the putting together of the duplicates constitutes the register.

Under the original Torrens System there were large benefits accruing to the registered owner. By reason of the indefeasibility of the title, it is protected against adverse claim. This means that, were proof adduced that the registered owner was not entitled to registration, the rightful owner nevertheless remains deprived of recovery of his land. Compensation funds, however, are established from which sums are paid to the real owner. This fund in Australia is constituted by a contribution of one half-penny in the pound sterling, or about one fifth of one per cent levied upon the value of the land at registration.

Benefits of the Torrens System

Few errors have occurred and this fund has been found ample to correct them and to do justice to the rightful owner. The answer to the criticism of injustice is found in the fact that registration is given only to an applicant in actual occupation so that a rightful owner

never is turned out from actual possession. Compensation is given to him in lieu of a property he was not caring for at the time indefeasible title was vested in the applicant.

Following the first advantage is simplification of future dealings with the land that has been registered. Sale requires merely cancellation of the old and issuance of a new certificate of title. This demands practically no time, virtually no expense, and eliminates the long and legal processes involved in usual transfers of land title. It is also possible by this system to transfer part of the fee and only the partial transfer need be stamped on the certificate of the transferrer. There are other variations of this rule, the point being that certificates can be separated or combined in proportion to the number of freeholds involved.

Simplification of land transfer

In addition, mortgages and leases are entered upon the certificates and the charges upon an estate can be known at once. Caveats against dealings during a loan period are registered, and direct settlements and entails can be created.

For all this is paid an application fee of five shillings and the certificate costs one pound. Any subsequent registration costs from five shillings to one pound. Title examinations are in proportion to the value of the property but the charges are never higher than one third of one per cent.

It is not astonishing that the Torrens System has faced the tremendous opposition of title companies, involving the legal profession as well. It is patent that by the simplification of title registration demand for legal interpretation would be largely minimized. Yet lawyers are attracted to the

Growth of the system

system for many reasons. On the other hand, because of its simplicity, the influence of the system has steadily grown through its appeal to common sense and to economy. It is safe now to assert that the future of the system is assured and that a world-wide acceptance of its great values must soon follow.

Proof of this is seen in the history of the spread of the Torrens idea. In its Australian home it began in 1857 in South Australia which then passed the first Real Property Act. British Honduras in Central America passed a Land Registering Act to supersede conveyances by instruments, less than two months after the South Australian Torrens Act, in 1858. The system was introduced into Queensland, Tasmania, and Victoria in 1861. New South Wales adopted it in 1862. New Zealand followed in 1870, Western Australia in 1874, and now all British Australian colonies have their Torrens Laws. Fiji passed a Torrens Act in 1876.

## II

LAND registration has developed in proportion to advancing civilization. Its modern form is twofold. The more advanced type predicates three principles: granting of absolute title; compulsory registration; compensation in case of errors. With exception, to some degree, of compulsory registration, Australia, Austria, the greater part of Canada, Germany, portions of Switzerland, and Tunis have adopted full land-title registration. Registration of deeds, without indefeasibility guaranty and with no assurance of validity of ownership, is practiced in Belgium, England, France, Ireland, Italy, Scotland, the republics of South America, Spain, and some parts of Switzerland.

Principles of land registration

Long before adoption of the Torrens Law there had been public registration of land titles in various countries. Bohemia had registration in the twelfth century. Austria provided for it in its Civil Code of 1811, and renewed provisions of it in 1871. Hungary decreed it in 1855. Germany developed the system with its usual efficiency. Prussia in 1722 founded the system of district registry of mortgages. Just one hundred and fifty years after, in 1872, the system was enlarged from evidence of deeds into evidence of title, and the system became compulsory and indefeasible.

Evolution of title recording

Other German States have followed Prussia. It was adopted by Baden in 1809; Saxony, 1843; Sondershausen, 1850; Altenburg, 1852; towns of the two Meck-

lenburgs, 1857; Reuss (younger branch), 1858; Meiningen, 1862; Reuss (older branch), 1873; Oldenburg, 1876; Coburg-Gotha, 1877; Anhalt, 1877; Brunswick, 1878; Lubeck (amendment), 1879; Waldeck, 1881; Lippe-Detmold, 1882; Schaumberg-Lippe, 1884; Alsace-Lorraine, 1891. Hesse has long had the system. In Bavaria and Württemberg there is mortgage but not title registration.

The English system

As in all English legislation there has been peculiar complexity in the matter of land registration. This has been made worse by the principle of secrecy which obtained in the transfer of land. As in other European countries, the effects of feudalism have survived to prevent freedom in vital economic reforms. Great Britain has had freehold estates and copyhold tenure. The latter have given tremendous material to the demands of liberalism. Copyhold was restricted by private duties of succession, by rent charges upon the property, and by prohibitory limitations of various kinds, all of which it has been attempted to relieve by statutes permitting the copyholder to redeem the encumbrances resting upon the property by the payment of a definite sum to the lord of the manor. Copyholds are thus disappearing at the rate of three hundred a year. Advantage of the copyhold lay in the fact that transfer had to be public because of the rights of the lord of the manor where the purchaser was protected by investiture from the lord of the manor.

Modern British land ownership

Registration in England was practically useless by reason of the conditions of freeholds there. The Domesday Book of 1871 gave only about 200,000 landed proprietors in the country. These fought strenuously against legislation affecting in any

way their titles to the land. Statistics of 1909 gave England and Wales land ownership as follows: —

| | | *Acres owned* |
|---|---|---|
| 400 | Peers and peeresses | 5,729,979 |
| 1,288 | Great landowners | 8,497,699 |
| 2,529 | Squires | 4,319,271 |
| 9,585 | Greater yeomen | 4,782,627 |
| 24,412 | Lesser yeomen | 4,144,272 |
| 217,049 | Small proprietors | 3,931,806 |
| 703,289 | Cottagers | 151,848 |
| 14,459 | Public bodies | 1,443,548 |

Of waste land there are 1,524,624 acres.

Of the 77,000,000 acres in these two countries, 4,500,000 acres being in Wales, 2500 persons own 40,426,900 acres, and three quarters of the total acreage is owned by 38,200 persons.

Most English freeholds are inalienable by reason of former agreements. In virtue of these the owner may be precluded from any sale, having only a life interest in the property. Or his power of disposal may be limited by entail of the whole or part. Registration thus becomes futile or a superfluous guaranty.

Reforms in British land procedure

In view of the tenacity of English custom and of the continuous opposition of the English lawyers to a system, simplicity itself, rapid and of minimum cost, but which would reduce still more their function as conveyancers, it is surprising that any real reform should have been possible in British procedure, but the pressure for change has been long and increasing. The reform has taken various forms. Copyholds have been redeemed. Inalienable tenures have been converted into fee-simple estates. There has been large multiplication of small estates. Deplorable agricultural conditions, fear of expropriations, growth of

socialistic ideas have had their share in leading large landed proprietors to a subdivision of their huge holdings, and in encouraging offer of public lands held by county or by other authorities.

English Registration Acts

England has studied registration of lands since the days of Queen Elizabeth. At that time an act was passed requiring the enrollment of land sales. Its imperfections called for another act in 1617. Other bills failed. In 1708 registers for certain counties were introduced. Finally, in 1862, "An Act to Facilitate the Proof of Title to and the Conveyance of Real Estate," known as "Lord Westbury's Act," was passed. Registration was optional. Since it was the function of the law to allow but not to compel registration, and expense was great, the act failed. It had produced thirty-two registrations a year.

In 1875 the Land Transfer Act of Lord Cairns was passed. It lessened expenses and allowed possessory titles to become indefeasible. Both these acts lacked the feature of compensation for eviction or error. The legal profession steadily, and undoubtedly properly, because of their defects, opposed them.

The Land Transfer Act of 1897 remedied this defect by compelling the registration of land. This compulsory registration was made operative by degrees for such land as was made subject to it by an order in council. After the order no sale of land is permitted without preliminary registration of title. After May 1, 1901, no title in the city or county of London could be transferred without previous registration. The law has been found to be satisfactory.

## III

It has been asserted by the opponents of the Torrens Law in all old countries that it was not applicable to their country, although it might have advantages for younger countries such as Australia or Canada. This is amazing in view of the adaptability of a law which is the *habeas corpus* of land ownership and the protection of the rights of the individual in land possession.

Universal adaptability of the Torrens idea

In the case of Great Britain, it might have been impossible to establish a complete system of land registration in the British Isles, because of British unwillingness to accept or to adapt ideas taken from Continental nations. But the success achieved by the Land Registration Laws in British colonies made the mother country willing to take from them the best points of their systems, adjusted to meet English conditions.

It is one of the strong points of the Torrens idea of simplified land registration that it has shown extraordinary power of welding with the differing factors to be found in various sections of the globe. No statement of these facts shows this better than the report of Sir C. Fortescue-Brickdale, Registrar of the Land Registry of England, made to the British Government. He says: —

Report of Sir C. Fortescue-Brickdale

The examples collected include such great estates as the ancestral domains of the Bohemian nobility (among whom are to be found some of the largest landowners of Europe), subject to the strictest entails, carrying political privileges of the highest importance,

Torrens Law welds with every land custom

and especially registered in immense separate volumes of the provincial capital; they also include (by way of contrast) the tiny subdivisions of the peasant proprietors of the Rhine Provinces, where the principles and practices of the Code Napoleon are still deeply rooted in the customs and feelings of the people. They include, on the one hand, specimens taken from the rapidly developing building properties in the suburbs of Berlin, with their villa residences and restrictive covenants, and, on the other, remote Silesian manors, with their tenant farmers, antique rights of common and commuted rents, and services dating from feudal times. They show the system as applied to vast, featureless plains, like the corn-growing regions of Hungary, to the busy mining and industrial districts of Saxony and the Black Country of Germany close to the Russian frontier, as well as to the picturesque Alpine hamlets and pastures, with their innumerable independent rights of way, water, and complicated easements, to be found in Styria and the Salzkammergut; they pass from the intricacies of cellars and flats, courts and passages, of the Jews' quarter of the city of Prague, to the simple conditions of a quiet agricultural district in Brandenburg; from mortgages on first-class properties involving hundreds of thousands of pounds, and subject to the most complicated subsequent dealings by way of transfer, alteration, subdivision, and collateral security, down to rows of petty charges on diminutive shares in an inconsiderable estate; from great cities, where values are measured almost by the square inch, to trackless wastes and bare mountains of scarcely any value at all. Over the whole of this vast and diversified tract, embracing an area more than seven times the size of England and Wales, systems of registration of title differing in no essential particular from the systems established under the Torrens Acts of Australia, and partially established under the Land Registry Acts in England and Ireland, have been in almost universal operation for a considerable period, amounting in the principal Austrian provinces to upward of eighty years and in certain places dating from a much more remote period.

The insufficiency of the English system which made transfers of land dependent upon the production and delivery of all the title deeds or allowed equitable liens

by the depositing of title deeds with a lender had in its favor cheapness and secrecy, irrespective of the disadvantages of secrecy as public policy.

In the larger part of the world the recording system obtains. In many countries the record is one, not of content, but of information as to any of the instruments which affect the land. This record does not declare validity under the instrument, but makes possible an abstract of title to land, and on this is based, by examination of the record, knowledge of the validity and the merchantability of the title.

Recording systems and their results

In many of the same countries there is a further method of land registration. Conveyancing is under court supervision. Outgrowth of all these methods resulted in the latest system of registering land which registers title instead of instruments as evidence of title. This is the Torrens System. By it the Government vests and certifies to indefeasibility of title. The certificate issued is both guaranty of indefeasible title and protection against any previous vested right to the land.

The indefeasible Torrens title

This means the elimination of any need for a retrospective examination of title. There is only one title, — that registered. A record is kept of all matters of proceedings affecting the land, and an indemnity fund is created as compensation for any damages arising from the law.

Elimination of retrospective title examination

A new land like Australia furnished a fine opportunity for the application of the system. The many amendments or repeals of the original Australian Commonwealth Acts, which have been made the basis of criticism unfavorable to the Torrens Laws, have perfected the system, and it is to be noticed that there has not been, either in the six large Australian States, the self-govern-

ing colony of New Zealand, or in Fiji, any thought of changing the system.

Success of the English Torrens idea

Whatever may have been the slowness of the adoption by England of the registration methods, as evidenced by the fact that at the close of 1895 there were registered only 4236 separate titles in all England and Wales, covering 109,000 acres, worth approximately $70,000,000, the reform is making its way. First registrations and dealings in the county of London were as follows from 1899 to 1909: —

| *Year* | *First registrations* | *Dealings* | *Total* |
|---|---|---|---|
| 1899 | 2,955 | 1,273 | 4,228 |
| 1900 | 11,072 | 7,144 | 18,216 |
| 1901 | 16,356 | 13,262 | 29,618 |
| 1902 | 15,904 | 16,253 | 32,157 |
| 1903 | 15,262 | 20,279 | 35,541 |
| 1904 | 13,339 | 20,875 | 34,214 |
| 1905 | 13,125 | 23,281 | 36,406 |
| 1906 | 11,124 | 23,670 | 34,794 |
| 1907 | 10,083 | 23,865 | 33,948 |
| 1908 | 8,717 | 23,320 | 32,037 |
| 1909 | 7,159 | 20,981 | 28,140 |
| Total | 125,096 | 194,203 | 319,299 |

The Torrens System feasible in this country

In the county of London, registration is compulsory. In the rest of England and in Wales it is voluntary. The matter of importance in the opposition to registration here is that what is workable in London in this respect is undoubtedly feasible in New York City, in spite of the complications due to imperfect transfer records of the earlier days. The Hall of Records is doing splendid work in the cataloguing and entering of real-estate records, and this should contribute largely to successful operation of the Torrens System in the State of New York.

## IV

DEVELOPMENT of the land-registration idea in Canada has partaken of the influence of English conservatism and Australian experiment. There had been initiation of the system in Vancouver in 1861. British Columbia in 1870–71 made it a part of the laws, with new statutes in 1906, amended in 1907. It reached Ontario in 1885 and was fully revised in 1897. The Ontario System was based on the Act of Lord Cairns with the improvement of compensation for error and the compulsory feature of the law.

Spread of the principle of land registration in the British Empire

In 1885, Manitoba also adopted the Torrens System, which it revised in 1902. The Northwest Territories enacted land registration in 1886 and 1894. Alberta and Saskatchewan followed in 1906. Nova Scotia passed a Land Registration Act in 1904, operative by proclamation of the Governor. Such proclamation occurred in 1907. New Brunswick, Newfoundland, Prince Edward Island, and Quebec are yet without Torrens legislation.

French registration has been one of deeds and not of titles. It has even, by the Napoleonic Civil Code, been a matter of mere contract. In this were seen the effects of the French Revolution. Legal formalities had disappeared with the temporary elimination of social conventionalities. The Rights of Man had simplified all processes and the conveyance of property was made to depend upon the agreement and the assent of the two principals.

French registration one of deeds and not titles

Such a lack of system offered no protection to legitimate ownership in land. Even in the appeal to individual liberties found in freedom of contract there was seen the danger to safety. And in spite of opposition to what seemed a return to the complications of feudal encumbrances, demand for change grew until there came the registration of deeds. The Code required that *donations* should be registered. It also required the registration of *hypothèques*, a favorite French form of mortgage.

The Code and contracts

In 1855 this loose procedure was replaced by the law upon transcription which established registers for any contracts bearing upon land. These, however, referred only to deeds and not to titles, and thus did not guarantee indefeasibility in possession. The law lacks obligatory features of registration. And as it provided legislation only for *inter vivos* deeds, legacies under wills are not protected.

Improvement of the French system is largely possible because of the *cadaster*, or land-assessment map. Upon the *cadaster* depends accuracy of assessment. Upon the accuracy will depend indefeasibility of title, when that point of legislation is reached. A proper combination of the results of the *cadaster* and registration would give France a land law of value equal to the Torrens Laws of other countries. France has been moving in this direction for many years, after study of the Australian, the German, and the Austrian systems. The system would be simplification itself. Description and registry would be included side by side. It has been amply proved, by the experience of the Land Acts of 1885 and of 1891 in the province of Alsace-Lorraine, that the old French system of land transfer

The Cadaster

can be changed into modern registration. Adoption of such a system will turn possessory title into absolute title.

It is not the modifications of the Torrens Law or of the land registration principle that it is possible to indicate here fully. It is rather the cumulative force of its extension. While Belgium and Scotland are examples of perfected registration of deeds, but not of land, Tunis, under French protectorate, since 1885 registers land under an admirable system, which, however, lacks the compulsory feature. With the completeness, yet permeated with republican liberty, of Swiss government in things large and small, the Canton de Vaud in Switzerland has a land-title system of 1882, composed of both *cadaster* and registration, compulsory and comprehensive in its inclusion of many points of land ownership not recognized by the system of Germany even. Similarly, British Guiana in 1880 adopted a registration law. The Leeward Islands, by laws of 1886 and of 1906, allow a choice of absolute, qualified or possessory titles. This triple possibility is also offered by the registration of titles law passed by Jamaica in 1888 and much improved since. To these can be added British Guiana, Tobago, Trinidad, Turks Island and others, and Scandinavian countries. And the Torrens principle, based upon need and upon successful operation in half the globe, is extending its recognition in the other half.

Alsace-Lorraine, Tunis, Switzerland

The Torrens System a world idea

If much unnecessary bitterness has marked the modern spread of the land-registration system, and particularly the recent historical phase of it known as the "Torrens Law," there can be no doubt of its adaptabil-

ity and of its value. The persistent progress in many lands and the gradual expansion of the system in the United States predicate its ultimate acceptance in every quarter of the globe.

In the United States

The history of the Torrens Law in this country shows continuous advance. The first of the States to adopt land-title registration was Illinois. The passing of "An Act Concerning Land Titles" on June 13, 1895, marks an epoch in the real-estate conditions of this country. A referendum clause submitted the act to popular approval in Cook County, which was given November 5, 1895. There were 82,507 votes of approval and 5308 in opposition. The first title was issued February 10, 1896.

Acts and amendments

The Supreme Court of the State held the law to be unconstitutional as conferring judicial powers upon the registrar and the examiners of titles. In 1897 "An Act Concerning Land Titles," known as the "Torrens Law," was passed and again practically unanimously ratified by the electorate of Cook County, June 5, 1897. This law the Supreme Court of the State declared to be constitutional. Registration began March 1, 1899. Further amendment occurred in 1907 in two important particulars. Enlargement of access to the indemnity fund was granted, and the section of the law providing that, on the death of the owner, registered land would pass to the personal representative of the deceased in the same way as personal estate, was amended so that the registered land descends as unregistered land. A compulsory act for executors, administrators and trustees under wills was finally passed in 1910 in Cook County.

It may be noted that there have been peculiar reasons

for the interest and initiative of Illinois and of Chicago. The great fire of 1872 with its destruction of records, had reduced conditions practically to the primitive basis of a newly settling country. The only real-estate records that had escaped the fire were in the possession of the Chicago Title Insurance Company. Certain insurances involving great values and large possible constructions of ownership antagonized public opinion. This led to the demand for the Torrens Law which followed. Illinois

In 1897, California passed a similar law which has been practically a dead letter. The extremely successful Massachusetts Law came in 1898, with amendments in 1899, 1900, 1904, and 1905. The excellence of this law lies in its large reinforcement by extension of the land court feature of the act. Oregon passed a land-registration law in 1901, with revisions in 1905 and 1907, modeled extremely closely upon the Illinois Law of 1897. In 1901 also Minnesota passed such an act, amended it in 1903, and in 1905 repealed the amended act and repassed a law entirely rewritten. The Minnesota Act of 1901 was the model for the Colorado land legislation of 1903. Washington followed suit in 1907. And the Massachusetts Act of 1898 furnished the plan for the one adopted in the Philippine Islands in 1902 and in Hawaii in 1903. Other States

The Ohio Act of 1896 was invalidated by the Supreme Court of the State. In 1898 it was repealed. Enacted again in 1912, the amendment to the Constitution authorizing the adoption of the Torrens System was passed by an overwhelming vote. Enormous effort has been made this year to repeal the law or at least to cripple it. But with some changes the Ohio and New York

law has been saved. The mandatory provision, requiring land titles in court proceedings in partition or assignment to be certified under the law, was stricken out. The provision is now permissive and optional. Use of the Torrens Law depends upon the choice of the owner of the land. The State of New York put a fitting climax to this long series of impressive realty reforms by its adoption of the Torrens Law in 1908, with amendments in 1910. Further perfecting of the law is now under consideration by the legislature. With this list of States, including some of the most powerful in the Union, it may safely be said that the adoption of the Torrens Law in other States is assured and that, in spite of opposition, the principles of Torrens, as a modern development of older land laws to protect possession, eventually should find universal acceptance.

## V

In so far as the comparative legal novelty obtains, it is easy to decry or to attack a system because of its very youth or inexperience. Undoubtedly the lack of judicial ruling upon any or many points, renders the law weaker in its moral effect because the corpus of decisions is relatively slight, the feeling of insecurity as to final legal status is thereby increased, and the court tests have not been sufficiently inclusive of possibilities of interpretations. This may be said to affect more particularly the phase of the Torrens Law dealing with indemnification of a displaced owner, in so much as, after all, possession of the land may be said to appeal even less than the idea of award in case of deprivation of land.

The Torrens Law still a legal novelty

It is the feature of the indemnity upon which some of the best friends of the Torrens System throw themselves in criticism. It is apparent that every case of indemnification carries with it the feeling of injustice where an owner has been permanently deprived of land by the indefeasibility feature of the law. But the sentimental side is involved in this and the law intends rectification of error upon an absolute basis apart from the interest attaching the owner to the land.

Indemnity and indefeasibility

It is, therefore, of much moment that the value of the law stands without even the indemnity feature. The Supreme Court of Illinois, for instance, in passing upon the law affirmed that: "In our view of the case the indemnity fund feature of the law need not be considered. The law can,

Indemnity not necessary for Torrens's purpose

as we think, stand and accomplish its purpose without it."

If the American Torrens Laws are imperfect in the protective features of their indemnity funds, it cannot be advanced against such laws in general that they fail in indemnity. Reform is easy.

English guaranties of indemnity funds

By the Victorian laws of Great Britain any inadequacy of the assurance fund is made up from the consolidated revenue, repayable from the assurance fund when it accrues. In addition, it is possible to compel the payment of another sum for the assurance fund before registration as an extra risk where evidence of title is imperfect and claim is feared. The English Land Transfer Act of 1897 provides similar insurance from the consolidated fund of the United Kingdom, repayable subsequently from the insurance fund. The Victorian Act made contribution one half-penny on the pound sterling. This is equivalent to twenty cents for each hundred dollars.

Security under the Torrens System

In favor of the Torrens System must be added the question of security. Under the old system, the acquirer of land has no real guaranty for his purchase. Chance of error by human equation is great. This may arise by accident in the course of drawing the abstract. It may rest upon defective legal opinion. As a result, the penalty may be loss of the land at stake, with action for damages. There is no protection against the constant danger of forgery of the deeds. In this case, as the forged document is removed, an abstract remains and this abstract is incapable of revealing the forgery.

But by the perfected Torrens System security is ample. It is also twofold. The registered owner finds protection

against ejectment. And the rightful owner, if discovered, has compensation against the new registration. While in Australia, correction for fraud or error does not displace registration, in other countries rectification is made possible. According to the law of these various countries, there is a series of special protective measures. In this connection are quotable the statistics of error for the period representing about the middle distance of the operation of the law in Australasian countries. In New South Wales, in 1889, there were 209,894 registered operations under the Torrens Law. For errors there was paid the sum of £1172, reducing thus the average risk of mistake to two and a half cents for each operation under the law. This was further reduced to one and a half cents in Queensland, where, with dealings totaling 233,309, compensation amounted to £1500. And the triumph of the Torrens System was exemplified in Tasmania and in Western Australia by the fact that not one cent had been paid for compensation during the whole time of the operation of the law. This is a record for compensatory law of any kind that undoubtedly cannot find its counterpart in the history of law.

Torrens security twofold

Marvelous record

In addition to this is the further security that, whereas under the present cumbrous system, upon each transfer of property title must be searched, with multiplication of error possible in each previous transfer, the Torrens System rests or quiets the title by law at each transfer, thus eliminating search as to the safety of preceding transfers. If a purchaser desires examination of the abstracts which were the basis of the original registration, he can satisfy himself as to their validity. But it is evident that, as the official ex-

Quieted title

amination for registration included such an examination of the previous transactions bearing upon the property, the registration is practically conclusive, and attack within the period of limitation upon the registration and the existence of an indemnity fund add these further elements of security to the registered transaction.

What the absence of these qualities in land transfers means may be judged by the mere complication of the old system as the basis of a transaction. The value of property depends upon its salability and the right of the possessor to transfer it. Whatever delays rapidity of transfer depreciates to that degree the quick-asset value involved. If a system such as the Torrens System assures speedy, safe, and cheaper transfer of titles, the salable quality of the property is greatly enhanced.

Enhancement of salable value

Opposition to the Torrens System is largely a matter of personal interests. While this may excuse, it also explains. To charge, however, that the application of the law subjects the individual to the dangers of error is amusing for two reasons. One is, that, as in New York State, the ratio of experience is infinitesimal to the potential of accuracy. In a section of the country where every effort has been made to nullify or to paralyze the law or to let it die by desuetude, it may well be answered to objection, that real test has not been made. Nor is it valid to claim that there is public unwillingness to try the law. But, on the positive side, is the experience of the law where it has had fair proof. Writing of the first thirty-eight years of the Torrens System in Queensland, the Register of Titles speaks of the rapid increase of the work performed in the Registry Office, as shown by the statistics, as a

Extraordinary safety under Torrens System

fair indication of the popularity of the system. And he adds: "The transactions since the establishment of the office number 1,397,910, and there has been only one instance of loss through an incorrect title having been issued." Compared to the multiplicity of error in any corresponding number of transfers under the present system, the comparison would doubtless be illustrative.

Adapting this principle of the State as responsible agent in the indemnification, Massachusetts makes up any possible deficiency in the land-registration fund from any funds in the treasury, reimbursible from the increasing assurance fund. In the Minnesota and Colorado statutes, the deficiency is to be paid later with full interest. Other States simply direct payments from the indemnity fund.

Indemnification in the United States

Now, confessedly, as may be seen later, the Massachusetts law is a successful one. For an opponent of the Torrens Law to claim, therefore, that the law is not protective, seems specious. The scope of the Massachusetts law amplifies the fund by taking one tenth of one per cent for devise registration. Other States require new payments for new certificates. Still other States — Illinois and Oregon — levy a third tax, on the tax deed of registered land issued for tax sale. The tax is thus paid from one to three times and the insurance fund is strengthened thereby. It may be seen later what attitude may be constitutionally taken toward such an insurance fund.

## VI

THERE are three features of title registration upon which success of such a system must depend. These are the indefeasibility of the titles, the protective character of the compulsory registration, and the further protection of compensation for errors.

It will be seen that the indefeasible quality of the law is closely connected with its compensatory value. It is one of the main attacks upon the Torrens idea that the indefeasibility defeats possible justice in case of error and that the compensation is neither assured nor sufficient. It has been seen that the working of the system has been remarkable in just this point. The percentage of either error or loss is negligible. In so far as damage is caused, imperfection of the law will be largely responsible and the correction of amended legislation can be applied rapidly. But the proof of protection is there in the history of the action of land-registration laws. This may be considered.

Indefeasibility and compensation

The danger of the indefeasible portion of the law is in this injustice to a rightful owner who may supervene Registration by another deprives him of recovery of his property. Here comes in the compensation fund.

In the difficult and complicated conditions that arose in Alsace-Lorraine, both subsequent to a war and by the change from the French system to one both different and foreign, there arose only a few cases of error and these honest ones.

In Ontario the insurance fund is made by a contribution of one fourth of one per cent of the value of the land transferred.

The English Land Transfer Act of 1897, as has been seen, creates an indemnity fund, by setting apart, each year, a variable portion of the fees turned into the office of the Land Registry. The proportion of these moneys is determined by the Lord Chancellor and the Treasury. Were the occasion to arise when the insurance fund might prove insufficient to cover the indemnities due because of errors in registration, the State would provide for the deficiency. In this feature alone of the Land Registration Act lies answer to criticism of the Torrens principle as unable to protect the owner displaced by proved claim of antecedent ownership.

English Land Transfer Indemnity Fund

It has been the experience of the law that the fee for registration or for descent or devise of the property registered, taxed one fifth of one per cent, yields a fund larger than is needed for the protection of demands for compensation.

In Illinois the fee is one tenth of one per cent of the value of the land at the time of registration or upon any subsequent transfer. This is only one dollar for each one thousand dollars and also has proved ample for the purpose.

The plea of socialism has nothing to do with the value of the Torrens Law. Such criticism may be advanced against practically any fund guaranteed by a State, where there is a touch of the altruistic in policy. There are, after all, two kinds of socialism, a positive and a negative one. Where rampant radicalism may make dangerous some phases of

The charge of socialism refuted

collective action, there are many indirect benefits arising from a tempered governmental care. In the case of the Torrens Law, if the temporary possession by an individual of a sum of money drawn from a fund created to equalize proved injustice is technically economically dangerous because of the danger of loss during that temporary possession, this partakes more of theory than of fact. To the individual there come, by the action of the State, the accruing benefits of the sense of security from the financial backing of the State, of the rapidity of the reimbursement and of the social condition which, by the working of the system, is made through improved sociological status to inure to the advantage of the individual in methods of title registration and in all the methods that depend upon it.

It is not in the province of this discussion to indicate the various applications of the Torrens System. Thus the question of possible abuse of the indemnity fund is not at issue. Nor is the manner of the investment of the fund. The point is that, within six or ten years after loss, or as it seems to be in South Australia, in twenty years, action may be brought for compensation against the indemnity fund.

American practice as to Torrens indemnity

One reason for the opposition to the theory of indemnity has been the difference in policy between the principles of the system and the practice of this country. Whereas the laws protect the registered owner at the expense of the previous owner, if proved to be such, there is much to be said in favor of the American plan conserving the right of original ownership, when proved, and indemnifying the registered owner. It is on this principle that the title companies work, either curing the defect of a previous

title or indemnifying the loss of their guaranteed title policy-holder.

That the inherent position of the court, already quoted, as to the validity of the Torrens Law, apart from the indemnity feature, is proved by actual experience, is seen in the usage of the German Empire. No compensation fund for accidental errors in land registration there exists. The absence of assurance has been due, in the German system, differently from the Australian one, to rectification of errors allowed in the German registration, save when such rectification would injure a *bona-fide* purchaser for value. And also because in Germany few errors can occur owing to the complete knowledge of the history of properties that exists, to which a third reason is added in that registration is under the direction not of a recorder of titles, but of a magistrate.

German land assurance system

The theory of the assurance fund of a Torrens Law is well given by William C. Niblack and Douglas J. Thom, in their authoritative works, "An Analysis of the Torrens System of Conveying Land" and on "The Canadian Torrens System," respectively: —

Niblack on assurance fund

> The act of registration is the operative act, and the transfer and vesting of the title is effected, not by the execution of an instrument of transfer, not by the act of the owner of the land, not by the transfer of a valid title by the transferor, but by the State acting through its officer, the Registrar; and because it transfers and vests the title by the issue of a certificate which is declared by statute to be conclusive evidence of an indefeasible title to the land, the State creates a fund for the compensation of such persons as may be injured by the divesting and cutting off of rights and interests under this statutory declaration.

To accomplish this, in Manitoba a levy is made of one tenth of one per cent upon first registration where only mortgages or leases may precedently have been recorded against the land; in other cases one fourth of one per cent. Thom says: —

Thom on Canadian fund

> In Saskatchewan, Alberta, and the Dominion, the fund is constituted by a levy upon the registration of every grant of encumbered land and upon every absolute transfer of land of one fifth of one per cent of the value of the land transferred if such value is five thousand dollars or under, and one tenth of one per cent when such value exceeds five thousand dollars; and upon every subsequent transfer there shall be paid upon the increase of value since the granting of the last certificate one fifth of one per cent if the increase is not more than five thousand dollars, and one tenth of one per cent on any excess over five thousand dollars.

Experts estimate values. In most of the provinces of Canada liability lies against the assurance fund. But in Manitoba it is provided that if the assurance funds are insufficient, the public funds of the Province shall provide for the claim.

This has worked out to the complete detriment of the argument against an assurance fund made by critics of the Torrens System. Up to 1912, in Saskatchewan, there had been collected $527,-021, but the payments of claims were only $5406. Similarly, in Alberta, the funds amounted to $375,915 and the payments were $575. There is every probability that this great ratio will continue and the danger of exhaustion of the fund or of non-protection of the title-holder is practically nil. In the case of American States, where the number of registrations would be much larger, increase of the fund, under similar conditions, would be such as amply to provide for any possible demands upon it.

Critics of fund and facts

# VII

IMPERFECTIONS in the system of transference of land have created the title guaranty or insurance companies. Their value has been undoubted. The data they have collected are more complete and under better control than any other material upon the subject of the lands they cover. They have furnished legal skill and the largest measure of security in the acquisition of property that is probably possible for any source based upon private guaranty. Resting as they do upon legal bases in what they offer, they have provided a power of guaranty that has seemed the maximum of safety for the individual. They have been managed under auspices of high character. And they have gradually acquired a virtual monopoly of title registration which has been furthered by the relations with them of the legal profession. It may be said that law has been made the handmaid of the title company in a way advantageous to both parties, but the increasing control of title business by the companies has brought conscious or unconscious pressure to bear upon the lawyer who has found the title company a profitable client.

Title companies and their origin

Their value

The function of the title company has been to record very fully the changes in land-ownership and dealings and to examine the title of properties. Upon such as seem to be free from risk or doubtful conditions, the company issues a policy of guaranty or of insurance for which is paid a premium. Subject to absence of defects in the title the rate of the premium is

Function of title company

generally one per cent of the value of the land; and insurance may be for full or for partial value.

Such a policy means that the company will undertake the defense of all suits that may be brought attacking the title against the insurer, his heirs and devisees. The protection thus guaranteed is for the extent of the sum that has been insured.

But issuance of such a policy is only temporary. Upon transfer of the property insured, a new policy must be issued for either purchase or mortgage, with surrender of the old policy and new payment of charges to the company. The opportunities for enormous profits accumulating for these renewal costs of a proposition handled once for all in the original investigation, is apparent. It is not surprising that the power of the title companies has grown by reason of their profits, and that the great sums controlled by them make them large adjuncts of financial bodies under directorates largely constituted of the same memberships.

Profits and power

But while the guaranty of the title company undoubtedly adds further security to the title recorded by the promise of protection against doubt cast upon the validity of the transfer, it does not cure inherent weaknesses in the original title that is supposed to be protected. The policy does not protect against liens or other dealings relating to the property which escaped discovery at the time of the issuance of the policy nor does it protect from the rights of persons in possession but not shown in the record.

What title company fails to furnish

The guaranty given by the title company is, in fact, merely one against matters of record and limited to the face of the policy. It has, indeed, been said that the

existence of the title company is the proof of need of changed title registration methods. The company adds security to a title of record. It facilitates procedure in land transfer and takes responsibility that is attractive to the individual wishing smoothness and feeling of safety in his land operations. But the company cannot guarantee against adverse rights that may arise. It hedges its policies with limitations and conditions that impair the scope of the guaranty. It does not rest or quiet a title. It minimizes, very little, costs and time for delivery of title. It offers neither finality nor indefeasibility in its policies. And it has failed to adjust itself to the demands of country as distinct from urban registrations.

But there is a broader field of interpretation of the function of title registration. Quite apart from the initial interest and ownership of Government in land, the control of the distribution or of the safety of land transactions is a natural function of the State. There is no reason that it should divest itself of that particular phase of land activity. There is no question that the relegation to the State of the work now performed by the title companies would mean a tremendous saving of costs in the matter of land transfers and other land questions.

Land transactions a natural function of the State

It is this delicate point that unquestionably complicates the working of the Torrens Law in any place where the power of the title company obtains. By their affiliations with the financial institutions of the country they have secured a position of great power. Their interlocking directorates have resulted in the same relations with large loaning institutions that have been proved of economic

Title companies a part of interlocking finance

danger in other phases of our economic society. The result has been a simultaneousness of action which has paralyzed the independence of the individual even when he recognizes the saving of many things and the efficiency brought by the system of the title company.

There would seem to be two fundamental ideas in this legal condition. The one is the release of realty from the tax caused by the great cost of conveyancing under the present system. The other is the undertaking by the State of the work now done by the title companies and the transfer to the public treasury of the fees now collected by the title companies.

Realty and conveyancing

What this would mean to the municipal treasury is seen by the very reports of the companies in question. There has been a complete monopoly, in effect, in the matter of land transactions placed by the inaction of Government in the hands of the companies.

Now, while the companies undoubtedly offer public service, and this must be paid for, there is a wider economic relation in the function of this service when studied in connection with the public weal and the responsibility of the State. It may be seen later that theories differ as to the limits of this state intervention on behalf of public good. But the fact remains that the burden of real estate conveyance falls upon the portions of the public least able to bear it.

Transfers of property in realty are much less in the wealthier strata of society than in the lower. For this there are many patent reasons. The margin of safety of possession is far greater where there is a sufficiency of wealth to protect it. The poor man may accumulate enough for the creation of a home, but the chances against his descendants being

Rich and poor as realty owners

able to retain it are great. It is likely to represent the savings of his lifetime. If, then, his children inherit, the property must be sold to pay distribution of his estate. Thus the property comes frequently into the market. While in the case of the heir of the larger holdings there is probability, speaking generally, of a retention of the inheritance in the same race for several or more generations.

To tax the poor man with the costs of complicated conveyancing is an economic injustice when the State is distinctly shirking its duty by allowing the prerogative that belongs to it to pass into hands that make more difficult the peace and the prosperity of the individual taking title ultimately from the State, the original owner. It is easy to see what follows from this initial mistake. Beside the original and unnecessary costs of the first land transfer, whose safeguard can only be found in the virtual guaranty of the State, if, under stress of necessity, or because of possible advantage, sale ensues, the round of legal investigation must be renewed with renewal of costs. Further delays are inevitable. And when all is done, there is not the slightest assurance that the records are a safeguard or that a claimant may not eject the supposed owner.

Duty of the State

Speaking of the system of abstracts, in a passage now a classic of the Torrens discussion, but sneered at by the opponents of the Torrens Laws, a view of the absurdities of the present system of conveyancing, which it is intended to replace by the Torrens principles, is given by Duffy and Eagleson in their "Transfer of Land Act":—

Duffy and Eagleson on the absurdities of the present system

> This process of examining and abstracting all previous titles and facts relevant thereto had to be gone through whenever a

new sale or mortgage took place, for a mistake in a link of title would probably make the solicitor liable to a ruinous action for negligence. Add to the uncertainty, complication, and expense inevitable in such a system, the lengthy recitals and parcels of the purchase-deed, its formality of seal and delivery, the doctrine of constructive notice, the technicalities of the wording in premises and *habenda*, the fiction of the legal estate and its *sequelæ* in the case of mortgages, the shadowy equities "born of fraud and fear" haunting the most perfect conveyances, the subtleties of the judicial amendments and repeals of the Statutes of Uses, weak-kneed remainders without an antecedent estate, or limitations of chattels real without a trust, receipts for consideration sacrilegiously omitted from the indorsement of a deed, scholastic "possibilities on possibilities" stalking through modern daylight, usual covenants, "fruitful mothers of costs," and estate clauses barren of estates, covenants for title that may be construed as notice of a flaw in title, and the constant fear of long and complex proceedings in the courts from some unsuspected deed coming to light — add these, and it is not difficult to sustain the proposition that reform was desirable, and that a system which has got rid of most of these incubi, with at least as much security as before, has claims for, as it has been found worthy of, imitation.

The incubus and its router

The system that routs the incubus is the Torrens System.

# VIII

It was stated in the preceding chapter that the policies of title companies do not protect against liens or other dealings relating to the property which escaped discovery at the time of the issuance of the policy, nor do they protect from the rights of persons in possession but not shown in the record. While this is true of the titles of companies in a number of States, the companies of New York have reached a far better basis of title guaranty. These insure absolutely [1] and illustrate in this respect, as in others, the acme of efficiency for title companies. But there are other phases of the question.

Influence of the title companies is seen in many ways affecting varied interests. The companies have entered various fields. They certify titles; they guarantee mortgages; they act as trustees; they cumulate real estate, banking, legal, surveying, trust functions. They suggest that wills be submitted to them; or, if desired, the company will draw the will. They thus are in the way of controlling many of the most secret and personal relationships of men and relationships which have to do with results after as well as before death. They are

Influence of the title companies in varied fields

A danger

[1] But this guaranty gives a financial protection only, to the value stated at the date of the policy. It will not keep an owner in possession. Increase of value due to development, or to natural increment, would not be protected. The State alone can insure continued possession.

It is impossible for any private corporation to assure possession in perpetuity of a property whose ownership is necessarily dependent upon a title the source of which is inherently derived from the State which alone can guarantee possession.

thus in a position to know and to control the future as well as the present.

Legal advice and dual capacity

The offer of legal advice by the companies has its recognized danger. It may be too strong a term to use the legal one of ambidexterity, or the being on both sides of the question, with the consequent dangers to strict-mindedness. But the dual relation of the company in its dealings with clients is recognized as one not only delicate but dangerous to the best interests of the community in the long run.

The reason for this is seen in the twofold capacity which the title companies exercise. They advise their clients legally and they guarantee titles. There is in this, clear incompatibility of functions and the conflict necessarily arises between interest and duty. That there has been cause for criticism in these regards is well known. The information derived by the companies from their private knowledge as to facts and prices is of much value to them in their wider business interests, and there have been undoubtedly abuses that should not exist in this respect.

Title defects

Now, while the companies facilitate actual transfers, these have resulted in virtual monopoly of the realty conditions involved. This has made possible for them rejection of titles that should not have been rejected. It has made possible, therefore, doubt as to the validity of a title and has with this impaired salability. It has enabled pressure to be brought to bear upon the owner and has resulted in dangerous coercion for acquisition of property. By a capriciousness in their insurance they have made uncertain the value of realty to the detriment of the owner. And they

have refused insurance against defects which, while not making the title legally unmarketable, have thrown suspicion upon it and decreased its value. The protection they actually do offer is limited to pecuniary indemnity. The damages which they pay are not always full indemnity. And they cannot substitute for the protection that should justly be offered by a State to its citizens a protection which offers the owner safeguard in both his title and his possession.

Action of title companies

Like other powerful agencies that have accumulated control over a business, the growth of the companies hits the real estate brokers. The middleman is eliminated. The companies will not issue policies on a state guaranty. This is virtual coercion and it checks what would be a legitimate increase of realty business. But this is done to the accompaniment of other things. The charges of the insurance companies are excessive. There is an unwillingness to transfer a fee policy as in the case of other types of insurance. There should be transferability of the title. The title should be subject to a short search for the new period involved between the first or subsequent transfers, for the discovery of any subsequent defects, and then the title should become an immediately and safely transferable piece of property free from quibbles, refusals of renewals to new owners, and the imposition of a tax for certainty of transfer that is a gross mulcting of the ownership and paralysis of purchase by a new owner.

Glaring faults

In other words, monopoly has been abused. This has done much to call for a system of cheap and rapid land registration such as is offered by a complete and perfected Torrens System. There is no

Monopoly and its abuse

question but that in the mass of technicalities the title companies have done great public service. The thoroughness of their search, the multiplicity and completeness of their records, and the facility for the lawyer utilizing their material, or doing work for them, has appealed to the legal profession. This has meant much friendship for the companies in the minds of the lawyers. Once let it be proved that the law will still be in sufficient demand under a new system of conveyancing and the opposition of the profession will disappear as it has increasingly done the last few years under the pressure of world success of the Torrens Laws in their applications in other countries than the United States. It is, of course, understandable that realty companies and real estate agents are not over-friendly to the title companies, as their occupation is disappearing under the growth of the title companies. It is safe to say that the majority of lawyers now desire the Torrens System.

Efficiency of the title companies

The title company has a large double function at present. It certifies titles and it sells mortgages. It is whispered that at least two of the three largest companies in New York City are ready to give up their certifying business and to devote themselves to the mortgage side of realty strictly. The bulk of their business is even now the mortgage business. They do thirty-five per cent of the business passing through the Register's Office. They control ninety per cent of the business of loans. For one million dollars the plant of the office of the Register could give registration for all the holdings of the one hundred thousand real estate owners of the city. The title companies would charge thirty to fifty million dollars for the same transactions.

Title company business

There is an ethical phase to this. It may apply to the unnecessary suggestions or maneuvers for litigation. And it also may refer to the cardinal simplicity offered by the Torrens System, which eliminates for good and all the delays and the trickeries of unnecessary ligitation. This is perhaps best stated in the words of Abraham Lincoln, whose words seem as if prophetic of subsequent conditions: —

Ethics

> Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser — in fees, expenses, and waste of time. As a peacemaker the lawyer has a superior opportunity of being a good man. Never stir up litigation. A worse man can scarcely be found than one who does this. Who can be more nearly a fiend than he who habitually overhauls the register of deeds in search of defects in titles, whereupon to stir up strife and put money in his pocket? A moral tone ought to be enforced in the profession which would drive such men out of it.

Abraham Lincoln and legal moral tone

The Torrens Laws, once adjusted, permanently eliminate such violation of justice and the machinations of self-interest.

It is not claimed that there are profits for the title companies on the original research. The profits arise on the renewals of policies. As the companies do not allow assignment of policies, the profits for the future dealings are practically clear. It is not surprising, in view of this, to have official estimates that, within the past twenty-five years, the property-owners of New York City have paid in title fees the sum of one hundred million dollars. This does not show in their surpluses, as larger salaries, large buildings, a multiplicity of employees, and other expenses, absorb much of the profits.

Fees and freedom

The title companies are now in a difficult position. For many years they have fought the Torrens Laws. They have denounced the Torrens System as unconstitutional. They have felt the growing force of public opinion and they have had to face the power of the demand for this realty reform. Now, through their representatives on the committee of the Real Estate Board of New York, they have been forced to concede the rightness, the feasibility, and the constitutionality of the Torrens idea. Terrorism of the real estate owner is about to disappear. And with it the policy loaded with exceptions. And with this the policy of blocking loans.

Introduction of reform in this respect will mean the immense increase of ease in realty proceeding. It will make possible for the poor man a simple and cheap transfer of his property. But further than this, it will reduce the mortgage situation to one of cheapness and of speed. Banks will not refuse mortgages, nor will they charge five or six per cent for mortgage loans instead of four to five per cent for loans on securities. The fault is in the intricacy of the title examination, the search, time, expense, and uncertainty of the present system. When policies are simplified, when, as in fire insurance, they are standardized, when they are transferable, and when they are cheap, there will come a change in the realty situation and hardly before. This is what the Torrens System will accomplish.

Cheap mortgages and the benefit of the poor man

# IX

THE Torrens Law is essentially the creation of a business man for business purposes. If it has failed to make the progress that it should have made, this is due to the fact that it has fallen into the hands of lawyers and has become a matter of legal contest and of judicial construction; that is, a vehicle of interpretation rather than of action. Nor does this mean to imply that it is so faulty as a law or legal ideal that it needs continuous interpretation.

Torrens Law the creation of a business man for business purposes

There should be particular appeal to the business man in the Torrens idea. It has the simplicity, the straightforwardness, and the clear result of a business proposition. Its history is stated by Duffy and Eagleson: —

> The boldest effort to grapple with the problem of simplification of title of land was made by Mr. Torrens (afterward Sir Robert), a layman, in South Australia, in 1857. When he was Commissioner of Customs in that colony he had been struck by the comparative facility with which dealings in regard to transfers of undivided shares of ships were carried out under the system of registration provided in the Merchant Shipping Acts. Subsequently becoming a Registrar of Deeds, he became acquainted with the confusion and uncertainty inseparable from most questions of title to land. He devised a scheme of registration of title (as opposed to the old schemes of registration of deeds), modeled on the Merchant Shipping Acts, with such modifications as the different nature of the subject-matter demanded.

Sir Richard Robert Torrens

The Real Property Act passed through the South Australia Parliament, and, as has been seen, has since swept through the British possessions in a large part of the globe and has

Torrens Law has swept over the globe

reacted upon Great Britain itself, while other countries have adopted its leading features to their everlasting benefit.

The position of the opponents of a simplification of real estate conveyancing is a curious one. Even granting for the sake of argument that some constitutional changes might be needed for the perfect working of the Torrens Law, the persistent advocacy of the old and complicated system of land transfer seems inexplicable. There is not another phase of property-holding that is cumbered and vexed and harassed and twisted as is the system of conveyancing. The trial of the Torrens System has stood the test of constitutionality where properly worked out as a legal enactment. Its appeal is to common sense, to the need of rapid action, to the sense of security, and to the minimum of cost to the business man. Ask that business man who understands the Torrens System, large landholder though he be, whether he approves it, and he may qualify his answer by saying that it is all right for small holdings, but less certain for large ones. Ask again and he will attack the system that adds burdens too heavy to be borne upon realty. For whose benefit? The unanswerable argument for the Torrens System is found in the working of it where properly enacted, and the excuse of non-constitutionality used as an obstacle to change or to alteration of the constitutional limitation, seems flimsy and the resort of those who consider the things that be and the traditions of the law as the unassailable and immutable order that must not pass away.

Land alone is cumbered as an asset

There is no reason why real estate, the foundation upon which all wealth is built, should remain the excep-

tion to the law of business. Whenever a man becomes the owner of securities, whether stocks or bonds, whenever he acquires personal property of any description, his title to it becomes defensible against the world. Why is real estate held as the exception? Why, with the possibility open to owners of every kind of property except real estate, to procure immediately funds on any other asset, is the exception made as to real estate, and why do long, antique, complicated, costly legal conditions remain attached to what should be a simple matter equal in rapidity and certainty with any other similar transaction?

Why is real estate an exception?

Unquestionably such a system is doomed and real estate dealings are to be freed from the tergiversations and the trickeries of the law. The chain of titles which is invoked for every transaction is, indeed, a chain of servitude which will be broken by popular demand and legislative enactment. And no private interest will be found strong enough to arrest the emancipation of realty and its granted liberties which will place it on a par with every other possession of mankind in liberty and ease of transfer. And that old system is fastened, in the greater city of New York alone, to real property of the value of: Real estate, $7,458,784,625; real estate (corporations), $186,654,976; franchises, $404,420,311; or a total of $8,049,859,912.

Old system of conveyancing doomed

Apart from quibblings as to constitutional limitations, relics of the past that can be easily removed in a modern system of conveyancing to replace the antiquated system that survives, there is no valid reason why real estate should not be placed upon a sound and simple basis. The Torrens System makes this possible in the simplest and the safest form. No reason

Land registry possible

prevents application to land of the plan of stock registry. Certificates are issued for stock which give details of ownership and value. Properly signed, these are instantly convertible, for either sale or lien. There is no question of safety. There is no obstacle or delay in transfer. And there is no examination of title to the certificate. The Torrens Law brings the same conditions to land-ownership and transfers. The State gives certificate of ownership and transferability. As this is put by B. Howell Griswold, Jr., in his discussion of "The Torrens Land System": —

Griswold on this registration

Court officers examine the title and the owner of a piece of real estate is issued by the State a certificate of his ownership bearing upon its face his name, description of the property, and list of any charges upon it. With this in his possession the owner may, by writing his name upon the certificate and delivering it, assign all his right, title, and interest in the property to a purchaser or lender and the purchaser or lender can take the title with assurance and safety, for the State officers have examined the title and the State has provided an insurance fund to guarantee it.

This may be estimated in three ways. This has been best expressed by Jacques Dumas in his work on "Registering Title to Land": —

Dumas on the advantages of land registration

Saving time and trouble is much; but saving money is still better in such a matter where a trade of land is concerned. Forms of civil law, whenever they are connected with commercial requirements, come to be necessarily governed by rules of political economy, of which economy itself is the first.

Costs

It would certainly be interesting to draw up a comparative scale of fees and prices concerning registration of conveyances and of encumbrances in various countries. My attempt to draw up this scale failed to be successful, owing to the great differences in the management of duties between one country and another. In Switzerland, for

instance, the expenses are almost impossible to estimate, as the cost of registration is paid partly by a percentage on that duty. In Austria, fees vary according to the recency of the preceding operation. Elsewhere fees are only part of the costs, because one must add to the *ad-valorem* duty taxes for searches, or for perusing documents on examination of title as well as for noting the transaction on the books or on the land certificate or on the certificate of charge, according to the case. But we may say, in a general way, that after having added up all the different charges existing in the country where registration expenses are highest, we still remain far beneath the costs to be undergone where registration does not exist. To take an instance, we might compare the fees in Prussia with those in England. The fees would be in England, even where an abatement has been made, for $100, $10; $2500, $30; $5000, $50; $50,000, $350; whereas in Prussia they would only be for $100, $1.33; $2500, $8.02; $5000, $15; $50,000, $75.

It is the accusation brought against the Torrens System that it is not cheaper than the system of guaranty by a title company. This invites investigation.

In Australia, which may be considered the basic spot for comparisons, the freedom from registration obstacles of course vastly simplifies costs. The registration is simplicity and cheapness. Application for registration involves a fee of not more than five shillings. Certificate for the land costs one pound. Should the freehold pass through further transfers, legal notice of this fact by renewed registration costs a fee ranging from five shillings to one pound, depending upon the particular colony. And examination of title is proportioned in expense to the value of the property, where *ad-valorem* cost is most moderate and is never more than one third of one per cent.

Cheapness of Torrens fees

Under the Canadian system there is a similar modicum of fees. In Ontario one pound covers both the registration and the land certificate. This may be increased

by examination of the title. For subsequent operations connected with the property the fee is two dollars. In British Columbia, where absolute title follows seven years' registration of possessory title, the cost is somewhat more, as, in addition to the fee of one dollar, an *ad-valorem* duty of one fifth of one per cent is taken and one of one tenth per cent on mortgages.

In the initial stages of the English Act of 1862 costs depended largely upon the difference sought between indefeasible or possessory title. The former demanded much investigation, to which were added the fees of the solicitor required to draw the title. The second English Act simplified procedure and decreased expenses. Possessory registration gave priority of claim. Length of possession made title indefeasible and allowed reduced costs of registration in further dealings with the property.

The following table shows comparative costs under the old systems: —

| *Value of transfer* | *Cost conducted by solicitor* | *Cost under Westbury Act* | *Cost under Cairns Act* |
|---|---|---|---|
| £50 | £3 | 6*s.* 6*d.* | 5*s.* |
| £100 | £3 | 12*s.* | 10*s.* |
| £200 | £5 | 19*s.* | 15*s.* |
| £400 | £6 | £1 5*s.* | £1 |
| £1000 | £10 | £3 15*s.* | £3 |

Before the Solicitors' Remuneration Act of 1881 the costs of the legal side had been very much greater. In the case of first registration or title entries, prices depended upon the time involved in investigation. For a possessory title this amounted to about one half the cost of an ordinary transfer. In the case of an absolute title, this might be much greater. Actual practice proved, however, that these costs were really at a minimum.

In the admirable system of the Canton de Vaud, Switzerland, registration does not require a fee. The *ad-valorem* tax on the sales of land covers the cost of registration and the fees of the registrar. The latter is responsible for errors in registration.

In the United States, where court procedure and official examiners are required, the working of the Torrens System, if made efficacious, is seen in another guise.

It is to be noticed that under the old and the new systems, the strictly legal fees would be the same as would be the fees for publication. Initial registration or first certificate under the Torrens System is five dollars and notice adds a cost of one dollar. There is a further gain under the Torrens System, inasmuch as the recording fee does not change for the fee for one deed, irrespective of the length of the deed, while under the present system the recording is at the rate of ten cents for each one hundred words. In the case of a deed running to thirty or to forty pages, the cost of recording becomes a quite large additional tax. This, too, is to be put to the credit of the simplified system possible under the Torrens Law.

Plan of the Registers of New York County

By their able presentation of the Torrens Law advantages, their suggestions for amendment in the State of New York, and their proofs of the feasibility of using the present plant of the Register's Office for the registration of land under the Torrens System, Register J. J. Hopper, of New York County, and Special Deputy Register W. Fairchild, have brought telling arguments to bear looking to these improvements. On the matter of costs, they have prepared the following statement and figures, which are convincing of the opportunities for the

proper use of the law which is being injured by ignorance of its purpose and its workings and by other reasons that it may be superfluous here to enumerate. It will be largely for the public weal if the public be made to see the facts in the case. The Register's Office says: —

These computations are based on the use of the title plant in the Register's Office in its completed form and on the assumption that the work of examining titles for Torrens use will be placed solely in the hands of the Register's Office, and that eventually all the titles of New York County will be covered. Of course this means that the work will be spread over a period of years.

Cost of title examination

A tentative plan would work out as follows: An examination divides into certain distinct parts: —

1. Farm title examination. In the process of examining any given title, it is usually necessary to examine the early title or farm title of a large parcel often containing hundreds of lots. Subsequent transactions would reap the benefit of this first examination. For this reason the examination of farm titles is taken up as a plant proposition. An average charge of five dollars will therefore be laid against each lot to cover the examination of title to the farm. This examination will cover everything affecting title including partitions, foreclosures, wills, etc., all of which must be covered in working out farm lines and titles.

Component parts of plan: farm title

2. Continuation from farm title. The farm abstract and certificate of title generally carries the title to the point where the farm breaks up into lots. This period is usually from twenty-five to seventy-five years back of the present. An average of fifty years for the lot search may be allowed. A charge of ten cents per year for each side of the index (conveyance and mortgage) will be made for this locality search and examination, or an average total of ten dollars for each lot. This would include a search on the index of indefinite or miscellaneous instruments; also the covering of breaks in the chain of title by wills, equity actions, United States Loan Commissioners, etc.

Continuation

3. County Clerk, Federal Courts, etc. Old equity actions (or all real property actions back of the block system) should

be covered as a plant proposition. The judgment search is a name search and the official charge is five cents a year for each name. To this must be added a fee for the certificate and seal of the official. The cost of the judgment searches, therefore, depends on the number of names in the title. In the Federal Court, also, are the searches for the bankruptcy periods; there are also municipal department searches, which at the present time are free; also the Comptroller's search and tax search. The tax search may be obtained for $1.60 for each lot. Altogether an average allowance of ten dollars for these minor searches should cover.

County Clerk, Federal Courts, etc.

4. Compiling the examiner's report of title. For the work of assembling the various elements making up the examiner's report and the reading and passing upon the sufficiency thereof, a fee of fifteen dollars will be charged. This is the same fee charged in Chicago by the official examiner.

Report of title

5. Survey. The cost of the survey and the physical inspection and inquiry upon the premises is additional to the ordinary examiner's fees. The surveyor's charge is usually fifteen dollars, plus an additional amount where the survey covers more than one lot. On the average, if an allowance of ten dollars per lot were made it would cover the cost of surveys.

Survey

The following is a summary of the cost of examination by an official examiner attached to the Register's Office: —

Summary

| | | |
|---|---|---|
| 1. Farm title examination and certificate | $ 5.00 | |
| 2. Locality search and examination from the farm certificate to the current date | 10.00 | |
| 3. Examiner's fee for preparing report | 15.00 | |
| Total fees accruing to the Register's Office | | $30.00 |
| 4. The minor searches | | 10.00 |
| Total search and examination fees | | $40.00 |

It is the custom of title companies to charge according to valuation. Their charge on initial examination is $50, plus $5 for each $1000 of value. This includes the insurance premium, but does not include the cost of the survey. Taking a $10,000 piece of property

Comparison with title company charges

as the basis, for example, the following is a comparison of the cost between an official examination by the public office and a similar examination by a title company: —

| | | |
|---|---|---|
| Title company charge, including insurance | $100.00 | |
| Survey | 15.00 | |
| | | $115.00 |
| Register's Office — search and examination fees as outlined above | $40.00 | |
| Survey | 15.00 | |
| Insurance premium at $1 per $1000 | 10.00 | |
| | | 65.00 |
| Difference in favor of the Register's Office | | $50.00 |

This difference in favor of the public office increases with the value of the property; for instance, taking the same calculation on the basis of property worth $100,000: —

| | | |
|---|---|---|
| Title company examination fee, including insurance | $550.00 | |
| Survey | 15.00 | |
| | | $565.00 |
| Register's Office examination and search fees | $ 40.00 | |
| Survey | 15.00 | |
| Insurance premium at $1 per $1000 | 100.00 | |
| | | 155.00 |
| Difference in favor of the Register's Office | | $410.00 |

Results in New York County alone

The real property in New York County is valued approximately at $5,000,000,000. There are estimated to be 100,000 lots in Manhattan. This would give an average value of $50,000 for each lot in New York County. Using $50,000 as the unit of comparison we get the following figures: —

| | | |
|---|---|---|
| Title company examination and insurance fees | $300.00 | |
| Survey | 15.00 | |
| | | $315.00 |
| Register's Office examination and search fees | $40.00 | |
| Survey | 15.00 | |
| Insurance premium at $1 per $1000 | 50.00 | |
| | | 105.00 |
| Difference in favor of the Register's Office | | $210.00 |

An average saving of $210 for each lot for 100,000 lots would make an aggregate of $21,000,000, which would be saved to property-owners of the city of New York by making a full and complete use of the facilities offered by the Register's Office. This saving, of course, would be spread over a period of years necessary in examining the entire county in the process of bringing them under the Torrens Law.

The great saving in the Torrens System, however, is in transactions subsequent to the original registration. Under the present fees, the cost of transferring a title is two dollars, the Bennett Bill increases this cost to three dollars in order to provide enough to support the public office. Either of these sums is so small as to be hardly felt by a person in making a transfer of property. This small sum includes all expenses of examining and continuing a title to date, filing the deed, and making out a new certificate. As a matter of fact, there is no such thing as continuing a title or examining a title after it is once registered under the Torrens System.

Saving in subsequent transactions

On a $10,000 valuation: —

| | |
|---|---|
| Title company reissue rate (one half of the initial rate) | $50.00 |
| Recording fee for one deed | 1.65 |
| Total | $51.65 |
| Torrens certificates (including filing deed, etc.) | 3.00 |
| Difference in favor of Torrens certificate | $48.65 |

On a $50,000 valuation: —

| | |
|---|---|
| Title company reissue rate | $150.00 |
| Recording fee for one deed | 1.65 |
| Total | $151.65 |
| Torrens certificate (including filing deed, etc.) | 3.00 |
| Difference in favor of Torrens method | $148.65 |

On a $100,000 valuation: —

| | |
|---|---|
| Title company reissue rate | $275.00 |
| Recording fee for one deed | 1.65 |
| Total | $276.65 |
| Torrens certificate (including filing deed, etc.) | 3.00 |
| Difference in favor of Torrens method | $273.65 |

The average transaction being $50,000, this would be an average saving to owners of $150 (approximately) on each transaction. For 20,000 transactions a year this means a total of $3,000,000 saved each year to real estate owners for New York County.

# X

If, as has been seen, reduction of costs of land transfers can be extremely large under the Torrens as compared with the present method of conveyancing, there are many further proofs of this. Granting what may be considered a minimum of annual saving of fees by Torrens registration for New York County of $3,000,000, — and this is certainly a moderate estimate, — let some idea be gained of what such saving would be for the country at large. Take New York State, after New York County, with an assessed valuation of $11,385,137,127. Take all the large cities of the country and the forty-eight States. The results of the savings for the pockets of the people are stupendous and would aggregate into the billions. Under such a system not only would the actual savings for the people be a sum of enormous proportions, but these fees, turned into city or state treasuries, would be of double benefit, in so much as they would provide assurance funds amply protective of all the interests to be protected and the large accretions of funds would be assignable by enactment, after a certain reserve amount, for other uses of municipalities or State.

Torrens savings in fees enormous

Fees would create county or state funds

It has been shown how cheap the foreign recording systems are. In England the Solicitors' Remuneration Act allows the solicitors preparing title for purchaser and seller, $350 for property of the value of $50,000, making $700 for the two parties to the transactions. By the Law of 1908,

Cheap foreign recording systems

initial entry fees run from $3 for properties not above $500 to $70 for those of $50,000, with an additional 25 cents for each additional $500 up to a maximum of $125 for values of $160,000. For other dealings connected with the property, the charges are 37 cents for each $125 as far as $250,000 and 45 cents for each $5000 over $250,000.

In Prussia registration fees for properties of $250 are approximately $1.18 and in Saxony $1.25, while for values of $500,000 they are $307.50 and $537.50 respectively. For mortgages, registry dues are in Prussia 85 cents for values of $250 and $303.75 for $500,000, but in Saxony they are 50 cents for $250 and $259.37 for $500,000. These costs are even less in Austria and in Hungary. It may be said that the fees for the average transaction are probably from $7 to $7.50.

In Australasia, apart from public notices, an original applicant for crown lands pays $1.25. For properties of $750 or less, fees are $2.50; for $5000, $15; for each additional $5000 up to $50,000, $1.25; for each extra $5000 above $50,000, $2.50. Any one of some 51 other fees range from 16 cents to $5. Except for Tasmania, other Australasian States charge even less.

In Nova Scotia, applications for registry cost $2; each plan filed, 25 cents; and title examination runs from $2.50 to $15. Entries, either original or duplicate, are $2; subsequent certificates are 50 cents; judgments, etc., 50 cents; mortgages registered, 50 cents, and other services the same as usual registration charges. In Ontario first entries, according to possessory and absolute or qualified titles, run from $2.50 to $6 on properties not exceeding a value of $1 to from $8 to $50 where values

exceed $50,000. Canada is ideal for the cheapness in all matters of land dealings.

In California, fees are the same as for other recording services, but certificates of title with one duplicate cost $1.50; each further duplicate is taxed 50 cents; each registering of transfer with new certificate is $1.50, and there are minor charges for minor services. In Colorado, clerks' fees range from $3 to $5; title examiners have their charges fixed by the courts; and to registrars are paid on all land values, without improvements, $1, up to $1000, with 25 cents for each additional $1000; $2 for title certificates, and $3 for each transfer, with minor fees for minor services. Illinois charges $5 for application; $15 for registrar and examiner fees. Where titles derive from more than one source, an additional $5 is charged for each source. Registration is $2, transfer costs are $3, entries on the registry $3, and minor fees obtain for minor services.

United States Torrens fees

Massachusetts asks $3 for applications. Titles are taxed $5 and one tenth of one per cent of land value. Title registration is $3. Other fees are moderate in proportion. Minnesota charges $3 for applications, $3 for assessed values up to $1000, and $1 for each additional $1000; certificates are $2, new ones are $3, and the usual minor fees exist. New York asks $1.50 for application; entries, $5; new certificates, $2; and there are other minor fees for various procedures.

In Ohio the examiner of titles receives $5 up to values of $2000; from $2000 to $5000 an additional one half of one per cent; from $5000 to $30,000 one tenth of one per cent, but the total not to exceed $50, or $25 in ordinary cases, for each separate parcel. Certificates of

regularity cost $5. The fees of the recorder are $1.50 for original registration, with a duplicate; for transfers, $1.50; and, as in practically all States, memorials are 25 cents each.

In North Carolina the examiner receives $5 for values up to $5000, and 50 cents for each additional $1000. Registration certificate with duplicate costs 50 cents, and filing $1.

Oregon requires $2.50 for the registrar and $7.50 for the examiner, $1 for the original with duplicate certificate, 50 cents for new certificates, and minimum fees for other small services. Washington takes $3 to $5 for clerical fees, $1 for land values up to $1000, and 25 cents for each additional $1000. Certificate and duplicate cost $2; transfers, $3; and other fees are small. In the insular possessions of the United States, Hawaii and the Philippine Islands, the Massachusetts plan obtains. But in Hawaii title examination is $10 and one twentieth of the value of the land.

Costs of title company examinations

Against these costs may be put, for example, typical rates for title company examinations. In New York County, fees are $65 for value of $1000 to $3000; $100 for $10,000; $150 for $20,000; $275 for $50,000 and $397.50 for $99,000. This is for first examination. In Kings, Queens, and Nassau Counties, the rates are $40 for $1000, $80 for $10,000; $130 for $20,000; $255 for $50,000; $377.50 for $99,000. In these three, tax searches are added. Or, as this is stated, titles involving $40,000 or less, take one half of one per cent of the amount of insurance desired and add $50. In titles involving more than $40,000, take one quarter of one per cent and add $150.

For reissue examination of mortgages other than first mortgages there is an initial charge of $32.50, to which is added either $5 or $2.50 per $1000 as the insurance is less or equal to or more than $40,000. For reinsurance of titles an allowance is made of one half the regular fee for a policy of the largest amount of former insurance, not to exceed one half the regular rates on the new transaction. This is for New York County. In the other three counties mentioned the charges are slightly less. In addition, there are many other charges that are likely to be added. What this may mean to the seller or the buyer is evidenced by the mere list of surveys offered, as architects' building line, during construction, elevation, excavation, farm, miscellaneous (surveys for the location of an odd lot line or a survey for the location of an old road or lane, or a survey for the location of piers and bulkheads, etc.), title or surveys as in possession, sewer and curb, subdivision, vault. The system is all-inclusive and can be made all-constrictive, in conjunction with title insurance.

Surveys

While the companies are willing to accept work from local surveyors and while they are willing to continue surveys on future dealings for the same properties, nevertheless there is demand for a new survey on the part of the companies after five or six years and the increase of charges for the buyer or the seller is constant.

But the business aspect of the Torrens System lies in still another direction which appeals to the man of affairs and to the lover of efficiency. Writing in his inaugural address in 1891, the then Governor of Massachusetts, Governor Russell, said: —

Business aspect of the Torrens System — Governor Russell's opinion

I believe that the Australian system of land registration and transfer, more commonly referred to, from the name of its originator, as the Torrens System, is the longest step that has yet been taken anywhere towards that freedom, security and cheapness of land transfer which is conceded to be so desirable in the interest of the people.

Massachusetts has seen no reason to regret the enactment of later land legislation in the line of the Torrens Acts.

This is not all. The argument of the Governor of Massachusetts rightly deals with the business side of the land reform in the matter of records.

Growth of records

The density of the population, with the greater subdivision of land and the increase of real estate transactions which it involves, is reflected in the mass of the records of our registries of deeds.

He quotes four counties as containing 2022, 1979, 1355, and 1300 volumes. Increases in three of these showed from 1860 to 1900, 150, 131, and 110 per cent. In 1900 the numbers had risen to 2810, 2677, 1653, and 1606 volumes. The Suffolk Registry took 19 books of 640 pages of folio manuscript to record all deeds and other instruments from the first settlement of the country to the year 1700. By 1800 the number had risen to 193. There were 606 at the opening of 1850.

These had risen to 1250 by 1875, while in 1900 the number was 2656. This rate of growth continues in all thickly settled portions of the country. What this means for space and for difficulties of search can be judged.

What Governor Russell then said still holds good:—

The contrasts between our present system of registration of deeds and the Torrens System of registration of titles are very

marked. Under our system title to land depends not only upon instruments recorded in the registry of deeds, but also upon facts and proceedings which lie outside of those records. There is a constant increase in the mass of records of deeds and of proceedings affecting titles to lands, which makes the work of examination a constantly growing burden. If any man's title to a piece of land is questioned or attacked by any particular person, the Commonwealth has provided courts with appropriate jurisdiction in which the owner can have his right ascertained and established against that person. But it has failed to provide any method by which one can have his title ascertained and established as against all the world. Under our practice a new examination of the title is usually made upon each sale or mortgage of a piece of land, in spite of the fact that sufficient examinations may have been made in former transactions. These repeated reëxaminations, generally needless, not only cause useless expense, but delays which often involve a serious loss.

Contrasts between present system and the Torrens System

Delays

Under the Torrens System an official examination of title is substituted for an unofficial one, and the result when once sufficiently ascertained is given conclusive effect in favor of the owner, and his title is made perfect against all the world. In effect, under the Torrens System, the State provides a proper court in which any one can have his rights in relation to a piece of land declared and established, not only as against particular persons who may have an adverse interest upon special notice to them, but also as against everybody. The principle of basing decrees upon general notice to all persons interested already prevails in our probate law. Laws providing for the removal of clouds upon titles to land, after general notice to all unknown defendants, exist in many States of the Union, and the validity of decrees made under such laws has been established by decisions of the Supreme Court of the United States.

[This eliminates] needless expense from repeated reëxaminations, loss from delays, and possible insecurity arising from the fact that title depends not only upon the records, but also upon facts outside of the records and not disclosed by them. Under the Torrens System the title is examined once for all, and there is no needless reëxamination; as

Elimination of expense

all subsequent acts and proceedings must be brought one by one to the registrar to be noted, the state of the title can be ascertained at any time by simple inspection of the certificate of record. Therefore, with the added advantage of great simplification of the forms of legal instruments, transfers can be made quickly, easily and at small expense; and, further, there is absolute security in the possession of the premises bought, resulting from the indefeasibility given to the certificate of title issued by the State.

# XI

In 1893 the World's Real-Estate Congress, composed largely of lawyers, carried with only two dissenting votes the resolution, "That it is the sense of the delegates of the World's Real-Estate Congress that they should do what lies in their power to call the attention of their various state legislatures to the benefit of the Torrens System, and recommend its adoption, so modified as to suit it to their state constitution and laws."

World's Real-Estate Congress and the Torrens System

Legal opposition to the Torrens idea has gradually weakened. This has been due to a better understanding of the principles involved, to the fact that the system referred to methods of conveyancing rather than to laws themselves, and to the further fact that in practice it has been found that there is no elimination of the lawyer to any such degree as was originally supposed.

But legal antagonism to the Torrens System is disappearing because of a very simple reason. The older type of solicitor or of lawyer, a large part of whose professional work had to do with conveyancing, is disappearing. In England, for instance, the extension of the Torrens System will gradually relieve him of the conveyancing function. In this country, the title companies have so largely monopolized the title and the mortgage business that the younger type of lawyer, except in so far as he is in the employ of the title company, takes less interest in the conveyancing side, and is, therefore, the better prepared to judge impersonally the working of the law.

Legal antagonism disappearing

What was said in the reports of the Royal Commission on Registration of Titles in Scotland, presented to both houses of Parliament by command of His Majesty, in 1910, — a report recommending the adoption of a system of registration of title for Scotland, holds true in general: —

Report of Royal Commission

> We think it probable that upon grounds of public convenience the business of land transfers would still be a specialized matter in the hands of a class who made it their business. But we cannot doubt that if a register of title were once established which showed conclusively and distinctly all that now forms the subject of solicitors' and searchers' investigations, the searcher's labor would be abolished, and that of the solicitor would be greatly diminished, and the expense correspondingly reduced.

There is, of course, at present nothing to stop the charges made by lawyers for examination of titles and these charges must be graded merely, as has been well stated in this connection, by "what the traffic will bear." Under proper Torrens legislation, such variations are eliminated and the fees of the examiners are turned, as has been seen, into the public treasury. How slight these need be is shown by Pollock's tables, Hugh Pollock being Deputy Registrar in London (£1 as $5): —

Registration costs in England

| (I) | (II) | (III) |
|---|---|---|
| $500 | $3 | Work is paid proportionably to its amount. |
| 1,500 | 5 | |
| 5,000 | 15 | Fees vary but average from $10.50 to $26.25. |
| 15,000 | 21 | |
| 50,000 | 70 | |
| 100,000 | 95 | |

(I) Property value. (II) Registry fees. (III) Solicitor's fees.

| (I) | (II) | (III) |
|---|---|---|
| $500 | $1.50 | $2.62 |
| 1,500 | 4.50 | 7.87 |
| 5,000 | 15.00 | 26.25 |
| 15,000 | 45.00 | 31.50 |
| 50,000 | 150.00 | 62.50 |
| 100,000 | 300.00 | 78.75 |

For property less than $500 in value, fees are 37½ cents for each $125.

(I) Property value. (II) Registry fees. (III) Either vendor's or purchaser's solicitors.

For titles outside the register, there would be additional charges by the solicitor.

| (I) | (II) | (III) | (IV) |
|---|---|---|---|
| $500 | $1.50 | For $500 to $1,500, | For $500 to $1,500, |
| 1,500 | 4.50 | fees of $15.75 to $26.25 | fees of $10.50 |
| 5,000 | 15.00 | 26.25 | 26.25 |
| 15,000 | 45.00 | 31.50 | 31.50 |
| 50,000 | 150.00 | 52.50 | 52.50 |

For property less than $500 in value, fees are 37½ cents for each $125.

(I) Amount of loan. (II) Registry fees. (III) Solicitor of lender. (IV) Solicitor of borrower.

The situation is best summed up by William C. Niblack, who gives the preceding figures and who has been the extremely able opponent of the Torrens Law in a long series of writings and in two large books, for many years: —

Niblack and a concession

If solicitors' fees are to be computed, according to the statements of all the foreign authorities on the subject, title insurance, as carried on in this country, is much the cheapest method of dealing with land.

But he adds: —

Nevertheless, it is undoubtedly true that this system [the Torrens System] is cheaper in the long run than the system of procuring an abstract of title to land and having it exam-

ined by a lawyer on each dealing with the land. In small communities the latter system is still inexpensive, but in large communities it has become expensive and unscientific enough to attract attention.

With this statement the advocates of the Torrens Law are entirely satisfied. They even go further. They accept from Niblack, the champion of the title companies, whose attitude has softened much by force of events in the twelve years from 1900 to 1912 — changes reflected in his first and last books discussing the Torrens Law — the additional estimate of the situation: —

In the present state of our constitutional law, the Torrens System in this country can never produce what it purports to effect, namely, a conclusive certificate of an indefeasible title in the registered owner, and can never be made so simple and secure as the foreign systems. The natural and logical effect of our laws is the development of title insurance, a guaranteed certificate of title, and not the development of a certificate of ownership of an indefeasible title to land, issued by the State. The progress of the Torrens System in this country is not to be impeded by mere adverse opinion as to its adaptability to our laws. A large part of the people in the several States desire to have it tried, and the trial is now on. It is useless for its advocates to gain little advantages for it from state legislatures, and it is equally useless for its opponents to throw obstacles in its way. This trial is to be a fair one, it is to be conducted patiently and slowly, and it will not be concluded until the success or failure of the system is demonstrated.

Torrens Law on trial

In other words, a system that obtains not only in the greatest part of the civilized world, but particularly in that part of it which is Anglo-Saxon and British, and which is steadily gaining in the United States in spite of frenzied attempts to nullify it and to repeal it, is stopped by two factors: One, the entrenched power of vested in-

Whence the opposition to the system?

terests, who, in effect, proclaim and demand for themselves a place superior to the position of law; the other, that changes in laws, which would facilitate the working of law confessedly by its opponents of greater pecuniary benefit to the public, are refused and the plea of constitutionality is invoked in spite of conditions in many parts of the country which make unthinkable a reversion to an older discountenanced system, despite the imperfect operation of the new system hampered by its inexperience, by the many problems still to be adjudicated through the opposition of its enemies and by specific criticism of its salient features.

Merely a general outline of the legal questions at stake can be suggested in these articles upon the Torrens Law. To the objection as to the judicial function of the registrar, it can be answered, in the words of Niblack: —

> While under conditions in foreign countries the Torrens System can be called a great system, it is evident that it is still in process of evolution and development, even in its elementary principles. The effect of a registration by a registrar and the nature of his powers under the system were the subject of conflicting decisions in the courts of the Australasian States, until in 1905, the Privy Council of England settled the question for all states, colonies, and dependencies under English jurisdiction by declaring that a registrar acts judicially in his limited sphere of registering titles, and that his certificate is conclusive.
>
> Registrar and register

It is not probable that the law of the United States, in the last analysis, will be found to occupy any other position than that of English jurisprudence in this respect.

It is, of course, a preposterous attack upon the Torrens Law or, in fact, any law, to question the force of the

public record. By the working of the law, the registrar issues certificates of title. These constitute collectively the register which must represent as authoritative the list of persons entitled to sell, mortgage, or in any way deal by rights of ownership with the land registered. Where sanction for the record is of judicial origin, there can be no question of its validity. In addition, it is kept accurate by an official whose interest it is to insure accuracy as he is under bond. The resulting register has all the authority guaranteed by its legal and state sanction. Experience in many countries proves that the sanction is complete and that the accurate character of the register cannot be questioned.

Sanction for the record

## XII

It has been seen that the function of the register in the Torrens scheme has been made the basis of attack upon the law on its constitutional side. It is, therefore, interesting to note the status of this question.

The position of the register as an officer has been settled. Two years ago the State of Ohio made a new constitution by amending the older one. By this constitution the register is no longer a ministerial officer, but has become a judicial one. The result of this enactment has been curious. The opponents of the Torrens Law, deprived of their ground of refusal to accept it and of their plea for constitutional basis, have gone to the point of now declaring that the constitution of the State of Ohio is opposed to the Constitution of the United States. It is, indeed, taking to the last trenches of defense. But it is so much more ground gained for the Torrens Law in its working and in its progress.

Register a constitutional judicial officer

It is, therefore, of vast moment in the discussion of the Torrens Law, to note the attitude of the American Bar Association toward this great reform.

It has been repeatedly declared, wherever the Torrens Laws were making their headway, that they were unconstitutional. It then turns out that they are constitutional. And wherever any flaw has been found, it has been easy to correct the law. It has been repeatedly declared that the Torrens Laws were unworkable. And they have been found to work with extreme simplicity. It has been asserted steadily

Attacks and answers

that the Torrens System was at best a matter of local interest and not of national influence, and that there was no genuine public interest in the question, or that once given the opportunity to profit by the new methods of registration, the general public refused the opportunity, distrusted the validity of the procedure and of its results and returned to the older system of complicated entanglements, delays, and extreme costs in land registration.

The ignorance of the public may readily be granted, but there are many symptoms that the public is awakening to the realities of the case. There are, however, other and more absolute answers to such criticism. These are found in the proceedings of the American Bar Association with reference to the Torrens Laws. These may profitably be noticed.

American Bar Association verdict

In 1913 the Committee on the Torrens System and Registration of Title to Land of the American Bar Association presented a report which was adopted by the association. Its statement was that the "trend of events unmistakably shows that there is an increasing need and demand for the exercise of its functions in a practical, definite, and fruitful manner."

Torrens workings in the United States

How have progress and constitutionality gone together? This may be seen in the report, which gives a rapid survey of the status of the Torrens principle as operating in the United States (save in the Province of Quebec, it is practically universally operative in Canada). In California, the law has a five years' limitation for bringing action, but the heavy official bonding is said to have obstructed the law. Its constitutionality has been sustained. In

Colorado the limitation period is ninety days and the constitutionality of the act has been sustained. In Illinois, the Act of 1895 was declared unconstitutional, but in 1897 another one was passed which was declared constitutional. The limitation was two years, which impeded the progress of the act. An amendment of 1903 compelled registration for lands passing through the Probate Court. It is a matter of history that the title companies and title examiners bitterly fought all Torrens legislation. In spite of this, the amendment was passed by a vote of 241,924 to 30,043, but was declared void as not properly submitted to popular vote. It was repassed in 1910.

In Massachusetts the law was passed in 1898. Its limitation is thirty days. It created a special court. The law was "attacked with bitterness and every possible obstruction was thrown in its way by interested and determined opponents, but its constitutionality was practically settled in the leading case of Tyler *vs.* Judges." Amended several times, it has stood the test of the courts in numerous appeals. The Land Court is equal to the Superior Court in Equity.

Minnesota passed its Torrens Law in 1901, amended it in 1903, passed a new law in 1905, with a limitation of sixty days. Its constitutionality has been sustained.

New York enacted its law in 1908. It had had a special commission which held public hearings and published a full and impartial report. The law has a limitation of six months. Of its sixty-five sections, nineteen have been amended by the State Bar Association.

The North Carolina Law of 1913, which started January 1, 1914, has a six months' limitation. It helps to nullify itself and impair "the conclusiveness of the de-

cree of initial registration by permitting the subsequent notation of adverse claims, liens, or charges existing at the initial registry and not shown on the registry."

The Ohio Law, "most drastic of all the acts," limits the right of appeal to thirty days, except in cases of fraud, when it is extended to one year.

Oregon passed a law in 1901, amending it in 1905 and 1907. Its limitation is two years. It is a copy of the Illinois Act.

Washington passed its act in 1907, and the limitation is ninety days.

Hawaii, in 1903, and the Philippine Islands in 1908, modeled their acts upon the Act of Massachusetts.

What, then, is the official view of the American Bar Association through its committee? It says: —

Persuaded that the tide of Torrens legislation is rising with irresistible force, and that uniformity can best be attained in its early guidance rather than in the attempt to control it after it shall have acquired the strength and volume of a flood, with much diffidence we submit herewith a tentative draft of an act which we trust may at least sharply direct the attention of the Conference to the need for uniform legislation on this great subject and possibly serve as the basis for such legislation.

"Irresistible force of Torrens legislation"

But there is more than this. In the report of the Committee on the Torrens System and the Registration of Title to Land, made in 1913 to the American Bar Association, is found the following: —

The Illinois Act has been before the Supreme Court of that State no less than sixty-one times, and it is safe to conclude that its constitutionality has been settled to all practical intents and purposes by these numerous appeals.

A large body of law is already in existence for the registration of titles which might with advantage be brought to uniformity.

One of the effects of registration of titles under the Torrens System will be to confer upon lands a new commercial quality by giving to them commercial mobility, by enabling owners to deal with their lands quickly, cheaply, and safely, and by placing registered certificates of title as far as possible upon an equality with registered stocks and bonds, making them marketable and rendering them available in all business transactions, both as collateral for loans as well as for direct sales.

Torrens Law gives to lands commercial mobility

And again:—

Residents of one State are now frequently landowners in other States, or interested in loans secured by lands in other States, and as the Torrens System becomes better known and more widely established, certificates of title will freely pass from State to State, thus increasing to a tremendous extent the bankable capital of the country. And if it be desirable to have a Uniform Stock Transfer Act, it is also desirable to have a Uniform Torrens Act. . . . It seems to us that the profession should welcome an opportunity for practical service in bringing this great domain of the law to a state of efficiency at least approaching that of the law merchant which has kept so much better pace with the march of commercial progress, and we believe that a Uniform Torrens Act would be a notable step in this direction.

"Uniform Torrens Act desirable"

The history of the action of the American Bar Association shows the power and progress of the Torrens idea. Undoubtedly the majority of the bar did not understand the system and its purposes. A commission was appointed in 1905 to investigate the system. In 1906 it declined to recommend the drafting of a law. In 1907, 1908, and 1909 there was inaction in the matter. In 1912 the commission would have advised the association to recommend the Massachusetts Torrens Law for the favorable consideration of all legislatures, but decided to wait. John H. Wigmore

Progress of the Torrens idea

then made a historic protest in a dissenting opinion or minority report.

It has been said of the work of the latter on Evidence that it is the only authority in this country and in England and also, from Supreme Court source, that it is the standard authority on questions of evidence. It is thus of moment that the author of the five works on Evidence, in his minority report above, favors uniform legislation and criticizes the opponents of the Torrens System. He said: —

Wigmore's analysis of the opposition to the Torrens System

Is it not permissible for us to take note frankly of the partisan nature of most of the opposition to the system? The aggressive intolerance of some of the opponents, as exhibited in times past to all who have had occasion to discuss the matter, leads to a natural suspicion that the cause which can excite such language may possibly be a very good cause which is simply treading on the toes of self-interest. Too much pains cannot be taken to sift the nature of this hostile testimony in attempting to reach an impartial verdict on the facts. . . . Wherever there appears a possibility that selfish vested interests are actively attempting to discredit and obstruct a needed reform, there is all the more reason for some impartial body to step in and investigate carefully into the truth.

# XIII

MASSACHUSETTS has probably the best judicial code in the United States. It is, therefore, fairly safe to say that additions to that body of law will be of the best type as to content and that the operation will prove of the most acceptable character. This has been so in the case of the Torrens Law. Does the Torrens Law do what it is meant to accomplish? Why does the New York Torrens Law fall short of results that it should equally perform? The contrast of the success of the Torrens Law in Massachusetts with the failure of a similar law in New York, is brought into prominence by the amendments to the present Torrens Law advocated by Register John J. Hopper and Special Deputy Register Walter Fairchild, both of New York County, which are designed to bring into the New York Law some of the features which have made the system a success in Massachusetts. A statement prepared by them — Messrs Hopper and Fairchild — and on data furnished by the Honorable Judge Charles T. Davis of Massachusetts, says: —

Comparison of the Massachusetts, Illinois, and New York Torrens Laws

Hopper and Fairchild indicate perfecting of New York Law

Hon. Fred. E. Crawford, of the Boston Bar, says: "If a new beginning could be made; if land were a newly discovered article, unquestionably the laws relating to it would be quite different and far simpler. In fact, in the latest settled countries the land laws are much simpler than in this country."

Davis and Crawford

This new beginning is what the State of Massachusetts has determined upon by the establishment of the Land Court. Mr. Crawford continues: "By the Land Court the State

makes it possible, so far as the title to any particular parcel of land is concerned, to begin anew; to set a day, back of which it shall be unnecessary to go. It starts the title on a new career and gives it new life. All titles in theory come from that State. From the date set, the title may be considered as coming anew from the State, as being born again, for from that day forth the State stands behind the title."

Torrens Law quick and safe

The so-called "Torrens System," as enacted into law and administered in Massachusetts, greatly facilitates, and makes safe and convenient, transactions in real estate. The reason is obvious. Under the law the outstanding certificate of title and owner's duplicate are conclusive evidence in all courts of the ownership of the land therein described and the nature and extent of all existing encumbrances, except certain items for taxes, etc., specifically enumerated in section 38 of the Massachusetts Law. In any deed or mortgage transaction, therefore, all that is necessary is for the deed or mortgage to be carried to the registry with the owner's duplicate certificate, the original and the owner's duplicate certificate to be looked at to see that the entries correspond, and then to pass the papers. A deed or mortgage transaction can thus be consummated on the same day the parties come to terms.

Torrens success in Massachusetts

On the files of the four registries of the Metropolitan District can now be found many mortgages to savings banks, trustees and trust companies, as well as to individuals; and instances arise where banks loaning large amounts have required the title to the property loaned to be registered before paying the money over. Such well-known concerns as the Boston Consolidated Gas Company, the Boston Elevated Railway Company, the Fore River Shipbuilding Company, the New England Structural Company, the General Electric Company, the United Shoe Machinery Company, the Bay State Street Railway Company, and the Edison Electric Illuminating Company, and numerous manufacturing concerns, have had, or are having, valuable properties registered. The law is also being made use of with special advantage by real-estate owners who are putting on the market tracts of land cut up into house lots. They find it to be an inducement in selling single lots to people of small

means to advertise and represent that no cost of examination of title is required, as the land is registered and that a certificate of title can be obtained for $2.50 as the only expense. The other kind of cases are afforded relief that was not available before the establishment of the Land Court, namely, cases where the title is good as matter of fact and law, though defective of record; and cases involving the construction of wills where the Probate Court will decline jurisdiction on the ground that the determination of the question is not necessary for the purpose of settlement of the estate.

The Land Court

By successive steps of legislation since the passage of the original Registration Act of 1898, the Land Court has become the court of exclusive original jurisdiction for all real actions in the State, and a great majority of these actions are now brought in the form of a registration petition.

Up to the 1st of January, 1915, 5221 petitions for registration of land had been filed in the Land Court from about 275 of the 363 towns and cities of the Commonwealth. The assessed value of these properties at the time of filing the petitions amounted to $50,464,195. In the four largest registries of the State, 16,429 certificates of title have been issued and 39,398 documents registered. As operations have begun in all of the twenty-one registries of the State, it is estimated that about 20,000 certificates altogether have been issued.

In the Suffolk Registry District during the year 1914 there were 41,274 unregistered entries, and 5802 registered entries, showing that in about fifteen years about twelve per cent of the business of Suffolk County had shifted to the new system. In ten years more it is probable that not less than one quarter of the business of this county will then be under the Torrens System.

On the 1st day of January, 1915, the assurance fund in the hands of the State Treasurer amounted to $248,857. But two claims against this fund have been made since the law went into operation, on one of which a verdict of $1200 has been recovered and on the other a verdict ordered for the Commonwealth.

In Massachusetts, land title registration is an official sys-

tem. The Land Court has complete control of the business. The examiner of titles is appointed by the judge of the court. The examiner's salary, as well as all other officials connected with the system, are paid by the Commonwealth. The examiner's fees, as well as all other fees, are paid into the public treasury. Payment into the assurance fund is compulsory and a title once registered cannot be withdrawn. Not only is the system popular with owners, but it is favored by mortgagees. On this point Hon. Charles T. Davis, Judge of the Land Court, in a recent letter says: "No question is now ever raised with regard to registration by mortgagees either institutional or individual, except that where a very large amount of money is involved registration is frequently insisted upon."

The New York Law has failed because it does not make the registration system official in all respects. It fails to provide a compulsory assurance fund; it permits titles to be withdrawn after registration. These fundamental defects in the present Torrens Law are corrected by the amendments introduced by Senator William M. Bennett in the Senate, and which are now being considered by the Legislature. These amendments follow the Massachusetts system by taking the matter of the official examination of titles out of the hands of title companies and privately employed attorneys, and placing it in the public office — the Registrar or County Clerk — directly under the supervision of the court. These amendments do not prevent title companies and private conveyancers from continuing their business as at present for those who prefer the old method to the new Torrens System; but this would be outside the Torrens System — we simply do not mix the two. Payment into the assurance fund is made compulsory and the permanency of the system is insured by preventing titles once registered from being withdrawn. The Torrens System is most advantageous in a densely populated metropolitan district where there is a great congestion of title records. This is peculiarly true with respect to New York City, which is the great metropolitan center of America.

Why does the New York law fail?

The adoption of the new Torrens System in New York means a saving of millions upon millions of dollars to property,

owners and the placing of real estate and securities based upon real estate, in the class of quick-moving investments, and thus gaining the advantage of a broader investment field.

What Torrens saving means

Nor is this all. The Torrens System is confessedly at its best in Illinois as well as in Massachusetts. It is, therefore, interesting to see the operation of the system in Illinois. Of it, Joseph F. Connery, Registrar of Cook County, the Chicago district, Illinois, says: —

The system is working very satisfactorily in this county and is increasing every year, and we expect an increase of about forty per cent this year in the system in every particular. The Torrens System in this county has developed from a small beginning into a very formidable competitor of the title company in this county. The title company in this county has an absolute monopoly and no competition except ourselves; consequently they are now, and have always been, opposed to the Torrens System. However, we have thrived under their opposition, and it is only a question of time until the balance of favor will be the other way. There are registered under the Torrens System about $60,000,000 worth of property, which is rapidly increasing. The title company has absolutely nothing to do with the Torrens System, as the Torrens is a public office and run by the Registrar for the benefit of the public. Every person who has property registered under the system, or who ever had property so registered, will not accept any other kind of title; and our greatest support comes from these people who have had their property registered under the Torrens System and who, realizing its vast benefit, become our earnest advocates.

Illinois Torrens Law defined by Connery

The Cook County Real Estate Board, an organization composed of more than one thousand active real estate dealers and operators, has likewise rendered very valuable services in behalf of the Torrens Law and recommend it to all their clients.

There are more than one thousand mortgage lenders, as well as individuals who make loans on Torrens certificates,

which loans are sometimes made on the same day the application for the loan is filed. There is a disposition on the part of these real estate men, lawyers, and others who are interested directly or indirectly in the private company to reject loans upon registered property, but, as stated above, there are so many others to take their places that this as a matter of business is on the decline.

There have been filed in the Torrens Office up to date 7390 applications, and an application may contain, and very often does, from 1 to 1200 or 1300 lots, as the law provides that an application may include any number of pieces of property so long as they are substantially the same chain of title.

Great growth in Illinois

There is about $40,000 in the indemnity fund. There never has been but one claim filed for indemnity on registered property, and that one was for the sum of $300 for a judgment which had not been shown upon a certificate, and which claim was paid.

The Registrar of Cook County, Illinois, adds these figures: —

*Annual Report of Torrens System*

| | *Transfers* | | | *Incumbrances* | |
|---|---|---|---|---|---|
| | *No.* | *Consideration* | | *No.* | *Consideration* |
| 1899..... | 20 | $31,125 | 1899 | 21 | $61,750 |
| 1900..... | 48 | 98,860 | 1900..... | 30 | 30,300 |
| 1901..... | 55 | 198,170 | 1901..... | 41 | 80,430 |
| 1902..... | 165 | 384,850 | 1902..... | 93 | 172,275 |
| 1903..... | 309 | 741,030 | 1903..... | 173 | 242,620 |
| 1904..... | 445 | 1,142,410 | 1904..... | 268 | 510,730 |
| 1905..... | 748 | 1,254,049 | 1905..... | 435 | 1,023,734 |
| 1906..... | 988 | 1,607,189 | 1906..... | 621 | 1,163,777 |
| 1907..... | 1,076 | 1,414,181 | 1907..... | 701 | 1,158,771 |
| 1908..... | 1,006 | 1,683,337 | 1908..... | 682 | 1,510,067 |
| 1909..... | 1,253 | 2,186,587 | 1909..... | 1,085 | 2,205,041 |
| 1910..... | 1,725 | 3,295,850 | 1910..... | 1,268 | 2,450,260 |
| 1911..... | 2,014 | 3,235,138 | 1911..... | 1,502 | 2,828,333 |
| 1912..... | 2,242 | 3,352,230 | 1912..... | 1,882 | 4,045,379 |
| 1913..... | 3,333 | 5,367,548 | 1913..... | 2,543 | 5,506,214 |
| 1914..... | 3,840 | 4,581,814 | 1914..... | 3,189 | 7,626,162 |

Application for initial registration: —

| | No. | Value of Property | | No. | Value of Property |
|---|---|---|---|---|---|
| 1907..... | 257 | $786,500 | 1911..... | 649 | $2,809,425 |
| 1908..... | 394 | 1,037,688 | 1912..... | 784 | 2,985,500 |
| 1909..... | 545 | 2,076,875 | 1913..... | 916 | 4,167,707 |
| 1910..... | 618 | 1,629,225 | 1914..... | 916 | 3,743,247 |

But there is further testimony as to the success of the Torrens Law in Illinois. Charles G. Little, who was for five years the chief examiner of titles in the Torrens Office in Chicago, and was afterward the chief counsel for a title registration company, is quoted in the proceedings of the American Bar Association, for 1913, as saying: —

Little on the Torrens Law

The vitality of the system depends upon whether or not it does facilitate and encourage the merchantability of land, both for purpose of sale and as security for loans on registered lands.

Any dispassionate person who will examine the records of the system in Cook County will surely become convinced that it can and will accomplish a very beneficent result if our better class of lawyers will stop their unintelligent criticisms, and lend their energies to an attempt to rectify certain features of the present law which are perhaps of doubtful constitutional validity. As to the constitutionality of the law, none of the objections raised are at all insuperable. They can be easily remedied by further legislation.

To condemn a whole system merely because there are certain provisions of the Illinois Statute which may ultimately be declared unconstitutional, seems to me rather absurd. Of one thing I am convinced, that it will be a very bold Supreme Court that, after a period of fifteen years, would dare to declare any of the vitally essential features of the Illinois Law unconstitutional. Such a court would, in my judgment, stultify itself after once having had an opportunity to pass upon all of these questions, as our Supreme Court did in the Simon case.

The cheapness and the facility with which such lots can be disposed of under the land registration system are very great inducements to dispersing of it among people of small means, upon whom the burden of the present system in general use is so great. In other words, a man having, we will say, a subdivision of three hundred or four hundred lots, upon which he expects to realize two hundred or three hundred dollars per lot, can readily sell to a purchaser if he can assure him that the price is net, without any expense at all in the way of abstract examination, lawyer's fees, etc.

# XIV

It would be interesting to take up *seriatim* the arguments against the Torrens Law and the answers to them. It could then be read from the Brief prepared by the Michigan Abstracters' Association for the American System of Recording and Constructive Notice, as against the "Torrens System" of land title registration, that "because of its arbitrary, expensive, and complicated methods, no less than ten Michigan legislatures have rejected the Torrens System in one form or another during the past twenty years." Yet it is up again in a new legislature. One can read further that "after seven months' experience in Ohio with a Torrens Act, which went into effect July 1, 1914, there were introduced during the first ten days of the Ohio Legislature of 1915, thirteen bills to repeal it in whole or in part. A bill to repeal the compulsory features and to provide how owners, under the Torrens System, can get out of it, was passed by the Ohio Senate on February 2, and by the House on February 18, unanimously in both cases." This repealing bill was declared to be an "emergency act, necessary for the immediate preservation of the public safety, property and welfare, in order that estates may be expeditiously settled and title to real estate perfected." In addition to which, on February 9, the Farmers' Institute of Bellevue, Ohio, adopted resolutions condemning "The Torrens Land Title Act," the preamble declaring that "said law is not for the best interest of the

Arguments against the Torrens Law

people." But the law still stands, with modified compulsory features.

Among other attacks made upon the system (in Michigan) are court proceedings for proving unacknowledged deeds, against thirteen distinct orders of court decrees; free public inspection of records, instead of one dollar to be paid for each certificate showing the condition of the register; freedom of action of present laws in the matter of abstracts, or where one, in a transfer, "may employ the agent or attorney of his choice, or none at all," while the Torrens registration requires a court or official registrar, a decree, compulsory registration for the land of a decedent and payment of one tenth of one per cent for indemnity fund; that a "simple, single proceeding in a court of chancery, under the decree of which the title is established in the owner as completely and effectually as it is possible to do under any system," and a "simple, informal and inexpensive" probating of estates is preferable to the possible court proceedings under the Torrens Law.

To these and many similar points, the workings of the best Torrens Laws in this country, in Massachusetts and Illinois, as illustrated from official sources, are the best answer. There is, however, what the Torrens Law opponents call "the desperate expedient of compulsion."

Opponents of the Torrens Law refer their arguments to their leader, Niblack. He has brilliantly upheld opposition to the Torrens System and the Torrens procedure and the Torrens legislation. In him is found the fountain head of statement against the Torrens land registration theories or practice. It is, therefore, important to note the deliverance on these matters of the Commission of

American Bar Association on Niblack's attitude

the American Bar Association for 1913, to which reference has already been made. Speaking of Niblack, it says that he

> was convinced that the system could not succeed or be maintained in the United States. . . . He has been forced to revise his views in some important particulars, and has assumed a more philosophical attitude in his recent work, "An Analysis of the Torrens System," etc., which is a very useful handbook. . . .
>
> The difficulties this author has had in seeing anything good in the Torrens System, and his constitutional doubts as to the constitutionality of any possible act are apparent in his writings. Yet in his last book he says: "There has been no adjudication on the constitutionality of the Oregon, Washington, or New York Acts, but there can be no question as to the reasonableness and sufficiency of the notices to interested persons in the proceedings for establishing titles, provided for in them. Indeed, the provisions for suits to declare and confirm titles in all the acts, except the Ohio Act and the original Massachusetts Act, are clearly within the well-established principles governing bills to quiet title. There are some recent cases upholding the constitutionality of a proceeding to declare and confirm titles, provided for in an act which is far in advance of any Torrens Act now on the statute books in this country, and we must examine them carefully for the light which they may throw on judicial proceedings for the original registration of titles."

And, referring to the close of this work, the Commission speaks of its last phrases as "significant words," which "show that he has been forced to recognize the inevitable sweep of the movement."

"Inevitable sweep of the movement"

Writing on the "Torrens System of Land Registration," in efforts to oppose its introduction into Louisiana, H. L. Loomis, Jr., says: —

> The Torrens System is of foreign birth. In Australia, whence it springs, in England, and in all British dependencies,

the legislative power is supreme. An act of Parliament may declare a fact, delegate to a commission full power to act under the statute; and if any vested rights are divested, there is no remedy. In our country, no vested rights can be divested until a man has had his day in court; and none but the judicial power can determine whether due process of law has been used to deprive a person of a right. The question of due process is characteristic of our form of government, and is the rock which will make it endure for ages. There can, therefore, be no such thing as the Torrens System in the United States, because there can be no indefeasible title until due process has been accorded the least vested interest in the property.

Louisiana: opposition of Loomis

Also:—

This Torrens idea is necessarily going to run afoul of our law and jurisprudence on the subject of community rights, of minor's mortgages, mortgages in favor of married women to secure their paraphernal rights, our homestead exemption, rights guaranteed by the Constitution and which exist without registry, our mechanic's lien laws under which liens can exist without registry for forty-five days after a building is complete, our tax laws, and so many other laws, that it will require a complete revision and remodeling of our statutes to make our present system conform to the Torrens idea.

According to further statements, the objection is to the

litigation that has followed in the wake of the Torrens System. This new branch of jurisprudence cannot be uniform, because the Torrens Law of each State is tinctured by local conditions, and has to be interpreted with reference to and in harmony with preëxisting rules of interpretation of the local courts. Any Torrens Law adopted by this [Louisiana] or any other State is, after all, nothing but a local law, to be interpreted by the courts in the light of local conditions, because there are many kinds of Torrens or land registration laws, and each jurisdiction must develop a jurisprudence of its own.

When this argument is further stretched into

Nations and communities have been willing to unite on fixed and universal principles of international law, of commercial law, of maritime law, and of laws governing transactions in personal property; but each country and each State of our country has clung tenaciously to local color in land legislation, including the transmission of land by the laws of descent or inheritances

Analogies from history

—upon this principle the varied legislation that obtained in the French provinces and Parliaments before the French Revolution, or the multiplicity of codes in the some three hundred and thirty petty principalities and states in Germany were preferable to the coördination of the modern French and German national systems.

There are further arguments of those who have become the standard-bearers in the Torrens discussion. Charles L. Batcheller, of California, grants on the test cases of several Supreme Courts of the States: —

Hostile concessions: Batcheller

Although these were merely test cases, not involving a real controversy over the title to a piece of land, yet there can be no doubt that under the principles laid down in these decisions, a plan of original or primary registration by means of a suit to write title against all the world, including unknown heirs and persons under disability, is perfectly valid, even though non-residents and others who cannot be found are served by publication.

He argues against the validity, cost, promptness, and safety features of the Torrens Laws, though conceding that

in several of the States, particularly Massachusetts, Minnesota, and Illinois, the system is administered very efficiently and very few mistakes have occurred.

While it is granted that a valid and constitutional land title registration law can be drawn, this means constant court proceedings and lawyers, thus defeating every object and every merit claimed for the Torrens System or land registration idea. Patently, the private title company must supersede the State. Mr. Batcheller has recently opposed the revision of the California Law as proposed, and pointed out possible dangers in the desired enactment.

Wyman

Similarly, Vincent D. Wyman points out the constitutional objections and attacks the system: —

> Even where it flourishes at its best in the different American states where Torrens laws exist, the system is but a weakling; a burdensome expense to taxpayers, little used and comparatively untested. Provisions for compulsory registration, usually unconstitutional, for county guarantee of the title, subject to the same objection, and for an indemnity fund, usually of insignificant amount and very questionable value or importance, prove inefficient; and but for the lack of authority for taking a title out of the operation of the system after once registered, withdrawals would probably equal the number of registrations, as practical experience has demonstrated that Torrens certificates do not commonly pass as merchantable, without an accompanying abstract, or the guaranty of a title company.

Compulsion to withdraw registered titles

Undoubtedly, the refusal of the title companies to accept Torrens registration, and the compulsion brought to bear to withdraw titles once registered, has weakened the law. It also explains the efforts made to omit the compulsory feature of registration.

Wyman also says: —

> The power of a court to bind contingent unborn remaindermen, in a proceeding to divest their possible claims, in cases

where there is no living representative of the class to be barred, is the subject of grave doubt; and while legislation would doubtless confer that power, the Torrens Laws thus far adopted seem to fail to cover that, as well as many other matters which might properly be the subject of legislation under existing constitutions.

The critic may find abundant flaws in each particular statute which attempts to substitute a Torrens System for an ancient and tolerably well-settled one. Without attempting such criticism, or denying the desirability of reform of our land transfer system, it appears obvious that the present inapplicability of the Australian System can be overcome only by constitutional amendment.

"Desirability of reform and constitutional amendment"

"Desirability and constitutional amendment," to make it perfect. This is the gist of successful Torrens legislation. Half a world proves its efficiency and success.

# XV

AUSTRALIA has given two principles to the world. One is the Australian Ballot. The other is the Torrens System. As to the latter, Australia has proved its faith, for $700,000,000 worth of property is registered under the Torrens Act. Against this in its assurance fund there have been claims of less than one hundredth of one per cent.

Australian economic pioneership

With such a record it is not astonishing that other American States, besides the eleven which have a more or less perfected or imperfect Torrens system, are moving in the direction of Torrens legislation.

By concurrent resolution of the General Assembly, Pennsylvania in 1911 created a Torrens Commission to examine the question and the preparation of an amendment to the constitution necessary for the perfection of the law. Utah has just passed through its Senate a Torrens Law. In Virginia such a law has had the approval of state and of local bodies, the Virginia Bankers' Association, the Board of Trade, the Richmond Chamber of Commerce, and, naturally, the Real-Estate Association having all endorsed such a law. There has long been agitation in Maryland in the effort to redeem from the burden of antiquated real-estate procedure the land of the State. In Louisiana, similar attempts have been made. A Torrens Bill is being pushed in the Michigan Legislature of 1915, and is being opposed by the usual vested interests. And New Jersey is at last taking some ini-

United States moving Torrensward

tiative in the reform of laws detrimental to the interests of property-owners and injurious to the welfare of the public.

In all of these cases the struggle of tradition, personal advantage and individual privilege, against simplicity and public weal, goes on. In all these cases the old arguments are advanced against the Torrens Law, which it has triumphantly met and disproved. Theory is fighting practice. And property in the United States worth already, by assessment valuation in 1912, $110,676,333,071 awaits the consummation of a common-sense, cheap, rapid, and practical plan which half the world has proved admirable in its workings, and able to surmount the quibbling questionings and the timorous traditions of much of the opposition to its powerful and successful career.

Common-sense, cheap, rapid, practical plan

More and more there has come into the interpretation and the understanding of the conditions of the Torrens Law the "rule of reason." It has been felt that the opposition to the system came (when not from interested sources) from failure to comprehend its manifold advantages, against which could be put legal fears, due to the radicalness of the reform and to the plain speaking of its advocates. When Torrens said, "The first step toward making a registration of titles practicable is to make a clean sweep of our present real property laws," the revolutionary aspect of the statement frightened conservatism, tradition, and lawyer. It is entirely true that foreign countries under the Torrens idea have no written constitution, and that this country has, and that the new law must stand the test of constitutionality. To question

Another "rule of reason"

that this constitutionality has been repeatedly maintained, is amazing. To deny the operative success of the system, where hostile influences have been unable to nullify its operation under imperfect law, is similarly amazing. To attempt to emasculate it, so as to protect vested interests, is another matter. Massachusetts and Illinois are triumphant refutations of the attacks upon the working and the success of the laws. Given a "rule of reason," and the law is safe. If unsafe, public opinion, when apprized intelligently of the real conditions at issue, will compel and the courts will sustain the Torrens Laws.

"Pivotal points of the Torrens System"

Perhaps no better proof of this is needed than the latest statements of William C. Niblack, in "Pivotal Points of the Torrens System." It would seem to indicate a still further concession from the leader of hostility to the Torrens System. He says: —

> Can this system with its many admirable qualities and great achievements be worked in this country? Is the necessity of the system for an official certificate of ownership, in and of itself incontestable, repugnant to our constitutional necessity for due process of law in depriving a person of property rights? Can a registrar, even though clothed with judicial power, make an examination of an instrument on a transfer of registered land once and for all persons, and by his judgment and act of registration bind all the world so that no one can question it? In Australasia, where the Colony and the States have power to declare a certificate of title indisputable, and where the system has been developed for more than sixty years, a purchaser in good faith and for value may deal with the last registered owner, get a new certificate, and know beyond peradventure that no prior mistakes of law or fact and no prior fraud or perjury may prevail against it. On this point the language of our statutes and of the Australasian statutes is the same. Do the statutes produce the same re-

sults here? A system by which persons by an inspection of the register may ascertain absolutely who holds title to a particular piece of land, and what burdens, if any, are on it, though more complicated than a mere statement of its elementary principles might indicate, is worthy of adoption if it can be created under our laws.

This is large concession, even followed by: —

The so-called Torrens cases which have arisen in this country do not touch the pivotal points of the system, and a discussion of the Torrens System in the light of these cases leads nowhere except to confusion.

But the practical benefits of the Torrens System remain. These are expressed by Gilbert Ray Hawes, as follows: —

Hawes on Torrens benefits

If there is a risk, as is frankly conceded, in the old system of title insurance, the public will undoubtedly prefer to adopt a system where there is no risk and where the State vests an absolutely indefeasible title which cannot be attacked subsequently, namely, by an action *in rem* in the Supreme Court, instituted by the plaintiff, claiming to be owner, against all mortgagees and other lienors and encumbrancers of record, the People of the State of New York (to cut off any question of escheat) and "all other persons, if any, having any right or interest in or lien upon the property affected by this action or any part thereof," as defendants. Then, by posting on the premises and publishing in a newspaper, designated by the court, copy of summons and notice of object of action, which constitutes notice to all the world, as the United States Supreme Court has held, and on further application to the court, and upon the survey, abstract of title, report of the official examiner, and other papers, final judgment and decree is entered, vesting title in fee-simple absolute, whereby all clouds are removed and all defects cured, and certificate is thereupon issued to the owner by the registrar. Thus, all risk to the owner is eliminated and a perfect title is created, not insured.

This makes "property more valuable and more salable."

No preliminary contract of purchase and sale is required, and there is no wait of thirty or more days for the title to be searched over again, with the payment of an additional fee to some title insurance company. This is a distinct advantage to the grantee, and the grantor can get for his property a much larger price, the difference representing a sum more than sufficient to cover the cost of his title registration.

The Torrens Law problem, often unnecessarily made a problem, has been before the public for many years. It is, therefore, quite possible to differentiate clearly the status of the law. The effects have been succinctly expressed by an authority on real-estate law and on the Torrens Law, Alfred G. Reeves, who says: —

Reeves on the Torrens problem

The initial expense of thus dealing with a title to a piece of real property is, of course, considerably more than that of having it examined and passed by a lawyer, or examined and guaranteed by a title insurance company. But this primary outlay can and will be minimized as the system comes to be more and more employed; and the ultimate saving to landowners, in avoiding repeated material expenditures every time the same property is transferred or encumbered and in conducting those transactions very quickly, is destined to be enormous. For the manipulation of a title once properly registered and set out on the certificate is thereafter quick, easy, and at very little cost. Landowners in Massachusetts, where substantially the same system [as in New York] is working smoothly, are utilizing their certificates of registration to-day for carrying through the entire process of transfer or borrowing in only a few hours at most and at a cost that is usually negligible.

Practical men have refused, and experience is justifying them in refusing, to believe that a title hundreds of years old must continue to be examined over and over again whenever it is encumbered or transferred. A system that avoids reexamination in a new country such as Australia, and in coun-

tries older than our own such as Germany, Austria-Hungary, and some of the Cantons of Switzerland, and in States like Massachusetts and Illinois, whose jurisprudence is substantially the same as that of New York, must and will ultimately work with success and for great benefit to real property interests in this State.

Posterity

It will be seen that, even granting higher initial costs of registration under the new system, this is slight compared to the subsequent advantages of the system. The bulk of mankind acquires real estate for the benefit of posterity. The larger proportion of men are creating homes and not speculating in realty values. With proper understanding of the conditions of the Torrens System, it would be realized that what is spent now by the original owner is saved for the second and later generations, and that, in effect, the estate of a man will suffer less in every way by even the greater payment at the initial transaction than if mulcted later by realty and legal charges taken together. Besides this, the assurance is great. Certification under judicial sanction practically eliminates the possibility of disturbance in later years. And this will help the law the more, as has just been pointed out, when large numbers of certifications will reduce the costs high at first.

Torrens Law is constitutional

It is of moment to consider other statements by Reeves. Among reasons for "strong and persistent opposition and many hindrances in New York" for the Torrens Law are: —

> The conservatism of real estate interests and the legal profession; . . . the novelty of the system and its lack of judicial construction and explanation in this State [New York]; . . . the activity of those who think their interests are being jeopardized by the ending of emoluments for repeated examinations

of the same title. . . . However much there may be in this statute as it now exists in New York that should be set aside or changed, the two salient things about it now fairly established are that it is both constitutional and advantageously workable. In a case (American Land Co. *vs.* Zeiss, 219 U. S. 47) in which the operation of a very similar law was carefully examined, the Supreme Court of the United States has held it to be constitutional, and in doing so has followed the decisions of the highest courts of practically all the States of this country in which the question has arisen. That ruling of the court of last resort upon such questions has been cited with approval by the Court of Appeals of this State; and with respect to one of the important provisions of our statute the latter court has recently said : "No constitutional provision inhibiting such enactment has been brought to our attention by the briefs or argument of counsel or our research, and it is fundamentally true that it is within the legislative power unless withheld by the constitution of the state or restricted by the Federal Constitution."

"Logical, practical"

That the law is practically workable has been largely proved by the cases of title registration (nearly one hundred in number) that have been successfully carried through in this State. Such a proceeding has just been concluded in Kings County (Voorhees *vs.* Van Sicklen) whereby the validity of a title (heretofore questioned by some of the title insurance companies and involving at least half a million dollars) has been established, and the beneficial working of the system in adjusting disputed boundaries has been clearly demonstrated. Moreover, in two decisions quite recently rendered (Partenfelder *vs.* People, and Barkenheim *vs.* People) our Court of Appeals, while refusing to order registration of the titles involved which were held to be defective and not entitled to registration, has treated the statute as presenting a logical, practical scheme of procedure and carefully explained the workings of its provisions. . . .

Its "stupendous benefits"

The law rests on a principle of procedure which the State needs and sooner or later will resolutely push forward — a requirement that titles to the property which is at the base of our economic structure shall be settled and made practically unassailable, and then shall

be retained in that condition and capable of quick and easy use and manipulation. The sooner the real property interests of this Commonwealth recognize the importance of such an advance, and insist on its application, the sooner will the stupendous benefits of title registration be demonstrated in the Empire State.

# XVI

Lord Chief Justice Coleridge and the Torrens System

It was the great English legal authority about to become Lord Chief Justice Coleridge of Great Britain who said, referring to the Torrens System: "The man who denies the practicability of applying it might as well deny that two and two make four." This is reinforced by some present conditions more particularly affecting this country.

Commissioners on Uniform State Laws

In the United States there has long been demand and tendency toward uniformity of legislation on great legal or economic questions. To this end the importance of the annual conference of Commissioners on Uniform State Laws has taken greater proportions. Its members represent experts in legal and land matters. Great weight, therefore, attaches to the report of the Committee on the Torrens System and Registration of Title to Land made to the Twenty-fourth Annual Conference of these Commissioners in the fall of 1914.

This committee says: —

Attitude of the bar

Few members of the American Bar have taken the time to study the provisions and operations of land registration acts. These acts in some respects present novel propositions, and it is in keeping with the traditions of the profession to question their constitutionality. It is said that such legislation is all very well in England, Australia, and Canada, where there are no written constitutions to limit the power of Parliament, but that the case is wholly different in the United States. And so a respectable portion of the Bar begin by assuming that no land registration act could be passed in the United States which would not be liable to be upset on constitutional grounds. And though our courts

have in direct contests sustained the present acts of the States mentioned above in every instance in which they have been attacked, there are still many lawyers who are inclined to doubt the constitutionality of such legislation. This doubt in most instances rests merely on vague general ideas with no accurate knowledge of what has been decided by the courts. It is believed that if the Bar were generally informed on this subject all doubts and opposition to land registration would disappear.

The time is ripe for the passing of Torrens or other land registration laws. Mississippi has joined the roster of Torrens States by adoption in 1914 of a land registration act. In Virginia the one hundredth section of its constitution gives the General Assembly "power to establish such court or courts of land registration as it may deem proper for the administration of any law it may adopt for the purpose of settlement, registration, transfer, or assurance of titles to land in the State or any part thereof." It is confidently expected that the coming session of the Virginia Legislature will enact a land law based upon the Torrens System, and many other States are moving similarly.

Further Torrens growth

Against the Torrens Law and procedure should be read the arguments of Henry Crofut White in the Report of the New York State Bar Association for 1911, which claims that in its present shape the law (New York) "is thoroughly vicious, and opens the door to fraud of many kinds and constitutional questions which will result in a confusion of title that cannot be settled for a great many years." The history of the Torrens movement is given in the scholarly, extraordinarily exhaustive and impartial statement of Henry Pegram, on Land Title Registration, in the Report of the New York State Bar Association for 1908.

White and Pegram

It is the criticism of the opponents of the Torrens legislation that catastrophes are in store for the system because so many matters lie unadjudicated and contingencies and cases are sure to arise which will destroy the very foundations of the system. To this it might be answered that the history of fifty years of Torrens Acts and actions in Australia sufficiently protect Torrens propositions and procedure. But these are the United States. And in this connection in the statement of the Commissioners on Uniform State Laws of the various States is to be carefully noted: —

Torrens jurisprudence

> The opponents of land registration have endeavored to overwhelm the proponents of the system, and should hereafter confine to undisturbed graves the spooks with which it has been so persistently attempted to terrorize a sensitive public. In point of fact, in the practical operation of land registration, none of the terrible predictions of its opponents has been verified. If called upon to file as an exhibit with their complaint a single "true owner" who has been robbed of his land by any of the land registration acts in the United States, these complainants would be compelled to confess the difficulty or impossibility of the task.

While this refers to the decision of the United States Supreme Court in a case largely settling the issues in Torrens jurisprudence, this further the commission says: —

Criticisms and answers

> It is evident from this review of the cases that every conceivable line of attack which could commend itself to the critics and enemies of land registration, has been followed and pressed to a conclusion both in the State and Federal Courts. In reviewing the decisions one is struck by the ingenuity no less than the persistence of counsel in raising every objection likely to command the action of the courts. Nor have these attacks been confined to the courts, but no effort has been spared to convince every legis-

lature which has taken up the subject, of the dangers of such legislation not only from a constitutional but from a practical point of view. Every act bears on its face the scars of desperate conflict. It is doubtful whether any legislation has ever been assailed with more bitterness or greater persistency than this; and unfortunately its antagonists have generally succeeded in marring the act even when they have been unable to defeat it. This Conference can render very high service to the whole country by guiding and moulding new legislation which is sure to follow, even if it should not be able to induce the States which have already passed land registration acts to adopt a uniform act.

The effect of the decisions reviewed herein which bear directly upon the constitutionality of the various title registration acts, is greatly heightened when we consider the numerous other cases bearing on these acts in which no constitutional question was raised.

Torrens legal status

It is impossible, of course, in these statements of Torrens Law principles that have been given, to take up merely the legal side of the case and turn these pages into court arguments. Of the Torrens Laws in general may well be said what has been stated in the discussion of the Illinois Law by the Torrens Land Title Registration League: —

The constitutional questions having been fully argued and profoundly considered by the court, and parties acting under the law having for over thirteen years acted and relied upon the decision as announced, the case now stands controlled and governed by the rule and under the doctrine and maxim of *stare decisis et non quieta movere*. This rule and doctrine is that the decisions which have been rendered by a court will be adhered to by such court in subsequent cases unless there is something manifestly erroneous therein. The rule applies with extra force to decisions construing constitutions and statutes and is regarded as imperative when such judicial decisions have entered into business transactions and have been acted upon and have thus become a rule of contract or property.

As says Sheldon: —

Sheldon on State power

> The certificate of title is made conclusive evidence in all courts. The registered title is thus made manifest, certain, and conclusive. Legislation, with such object in view, is entirely within the prerogative and duty of the State.

And again: —

> The power of the State to regulate tenure of land within its limits, and the mode of its acquisition and transfer, cannot be questioned. . . . The power of the State to regulate the disposition of land within her confines, by descent, devise, or alienation, is undoubted.

Hogg and modern land registration trend

In his great work on the Australian Torrens System, Hogg has pointed out that Torrens legislation is in line with reforms in conveyancing and land law which are taking the direction of registration of title. As he shows, a conflict arises because Torrens procedure is *a* and not *the* system. There is an undefined relation as yet between Torrens Statutes and other legislation. The courts draw analogies between general law which includes technical rules derived from the feudal system. But more and more the trend of land legislation means the abrogation of the feudal tenure of land which is at the foundation of our modern system of conveyancing.

Torrens Laws anticipate approaching legal reforms

He further indicates how rapidly the Torrens System will find help from the admirable — and analogical — systems in certain other portions of the globe. The common law of all South African British colonies — an empire — as well as of Cape Colony itself is based on Roman-Dutch law; this land legislation may be expressed that "Registration is necessary for transfer of land." In the same way,

in Great Britain itself, the Scottish law of real property is a system of registration because based on Roman law. The Torrens System, also, is analogical with the law of personalty. And the English law of copyhold tenure is based upon the same fundamental ideas. Were these ideas carried out to their conclusions there would be a return to the principles of allodial ownership. But, as in the case of the Torrens Laws, Anglo-Saxon jurisprudence, so called, tends to a single estate in land; this tendency means the amalgamation of the legal and the equitable estate as it now exists and the survival of the merely legal estate will be a return to the older system of English jurisprudence which has been forecast by such eminent authorities as Sir Henry Maine. In this sense the Torrens Laws anticipate as they bring the future in legal reform.

Possessory titles themselves are a relic of feudalism. As say Hurd and Yeakle, "The business and the judicial mind wants a safer, better, simpler, speedier title transfer" than the old system of conveyancing affords. Among reasons given for the Torrens System are that it removes lapses in registered proof of ownership. Titles are short. They carry their own proof. Land becomes a quick asset. Transfers of land increase by reason of this. Torrens registration adds flexibility and strength to holdings of real estate. And as a result of these factors there is a large increase of individual and of general wealth.

Hurd and Yeakle

That this is indisputable is evidenced by the fact that the Torrens legislation and procedure have facilitated the rapid growth of every city and country where they have been adopted.

Modern civilization demands Torrens methods and

Torrens legislation. It wants a system to replace the curious, cumbrous, complex, and costly system of conveyancing which is the outcome of the accretions of centuries and of times in which local prejudices and isolated national prides constructed monstrosities of legal architecture. The Torrens System cuts the Gordian knots of land jurisprudence and furnishes a trenchant instrument which, after its use as a weapon, can be turned into the ploughshare of modern economic life.

Civilization demands Torrens methods

The power of the Torrens System lies in its practicality. It is a direct system. It has brevity and simplicity. It has aptly been likened from the business point of view to the bookkeeping of banks, in which the account is on a single page: the Torrens registration with all subsequent dealings in the property are entered on a single folio and the record is complete and almost instantaneous in its utilizable qualities. It replaces all the confusion of the system that it should displace finally. It reduces errors and the chance of fraud to a minimum. It lessens litigation. It reduces loss to infinitesimal probabilities. It makes titles quick and marketable assets. It spells economy of time, money, and effort. It would save eighty per cent of the cost of abstracts and of fees for examinations of titles. Under the present system of conveyancing with its deeds of record whatever questions affect titles must remain open and are rarely if ever conclusively settled.

The Torrens System is opposed by "ignorance and self-interest." No title companies can take its place. The title companies flourish because they furnish a sense of security and undertake the responsibility of protecting their clients against

The source of opposition

possible attacks upon titles. The very existence of the companies and the character of their guaranties prove the dangers in the deeds that they furnish. Their guaranty adds not one iota to the security of the title that they sell. Only the State can guarantee. And the preposterousness of the argument that a state title is not indefeasible, while that of a private company is absolute, is apparent. The title companies arrogate to themselves guaranties that they deny to the power of the State.

What are the advantages of the Torrens Law? It abolishes endless fees. It eliminates repeated examinations of titles. It reduces records enormously. It instantly reveals ownership. It protects against encumbrances not noted on the Torrens certificate. It makes fraud almost impossible. It assures. It keeps up the system without adding to the burden of taxation. The beneficiaries of the system pay the fees. It eliminates "tax titles." It gives practically eternal title as the State insures perpetually. It furnishes state title insurance instead of private title insurance. It makes possible the transfer of titles or of loans within the compass of hours instead of a matter of days and weeks. Transfer and registration can be reduced to one dollar.

Torrens advantages

As expressed by Viele and Baecher: —

> By thus forcing the earliest possible settlement of equivocal situations, the system, in addition to its facilitating the handling of marketable titles, tends to prevent their ever becoming permanently unmarketable. The inspection of the original certificate proves the title. Without reference to the original, the duplicate kept by the owner proves his title, and shows the encumbrances upon it to the date to which it agrees with the original certificate.

Viele and Baecher

At the time of closing a purchase, looking over the certificate, the tax receipts since judgment of registration and before tax-sale, the docket of the United States Court, and viewing the premises, discloses all particulars of the title. Through the continuous availability of this proof, and by being transferable without the expense hitherto customary, and without delay after an agreement on terms, registered land acquires a new value as mortgage security and as an asset.

In addition to this, as pointed out by Alfred G. Reeves: —

> One of the splendid features of the Torrens System — a feature which realty interests should emphasize — is in its supplying a method whereby the owner of property may have his title tested and adjudged, *even though no attack is being made thereon.* Without this law, a landowner whose title is questioned, however improperly or unsubstantially, must often wait for a direct attack upon it, or a rejection of it when it has been contracted to be sold before he can get into court to settle the questions involved. But a registration action enables him to proceed affirmatively and compel all who might gainsay his ownership to come in and successfully assert their claims, or have them forever barred and extinguished.

Testing of title

He also recommends for the New York Statute the adoption of the Land Court, as in Massachusetts, and "closer judicial control of the official examiner, who examines and reports on each specific title as it is presented."

That the Torrens Laws will profit by actual economic conditions in the United States is apparent. The Federal Reserve Act, by its provisions in favor of loans by national banks and banking associations on lands not situated in a reserve city, makes possible large expansion in land loans secured by improved and unencumbered farm land to be situated in the Federal Reserve District of the lending

Federal Reserve Act and the Torrens Law

institution. These loans extend for a period of five years, but must not be for amounts exceeding fifty per cent of the actual value of the land. These banking institutions may loan to an amount of twenty-five per cent of their capital and surplus or to an aggregate of one third the time deposits. This means a tremendous impetus to public call for land legislation and the effects are likely to be seen in increasing state Torrens legislation.

Land is still the fundamental of wealth. Whether to primal or to polished man, it represents value surpassing other values. The desire of the individual, or the earth-greed of a nation, has meant from the beginning of time fight for possession and for retention of landed property. And land to the modern man means even more than ever it did to the former owner of the bare acres used as sustenance for family and for flocks. With the growth of civilization and the knowledge of the treasures connected with land has come better appreciation of it as source of wealth. Gold, silver, precious stones of every kind, building materials, and growth of lumber upon the surface of the soil, have all added to the struggle for land. And with it has come not merely the law of association, but the side of sentiment. "Native land," "home country," and its variations have been shibboleths of patriotism to humanity. So that land sums up the history of the human race and the goal of its efforts, its hopes and its rewards.

Land the fundamental of wealth

This being so, the efforts of mankind to protect land and to assure possession of it for himself and for his descendants have never ceased. Centuries developed the title. Title became the money of land transfer, more

important than the commodity or the cash consideration involved. And modern times have evolved the modern system of conveyancing called "Torrens."

Sir Robert Torrens summarizes the benefits of his system

Sir Robert Torrens, perfecter of the system of land title registration, whose efforts have been rewarded by the association of his name with the results of this great realty reform, has well summarized the benefits of the system of land title registration in the following: —

1. It has substituted security for insecurity.

2. It has reduced the cost of conveyances from pounds to shillings, and the time occupied from months to days.

3. It has exchanged brevity and clearness for obscurity and verbiage.

4. It has so simplified ordinary dealings that he who has mastered the "three Rs" can transact his own conveyancing.

5. It affords protection against fraud.

6. It has restored to their just value many estates, held under good holding titles, but depreciated in consequence of some blur or technical defect, and has barred the re-occurrence of any similar faults.

7. It has largely diminished the number of Chancery suits, by removing those conditions that afford ground for them.

We may add, says Sheldon, an

8. As to registered lands, it saves the rights of infants and others under disability, as no one can deal with the land except through the registrar's office, where all rights clearly appear and must be respected.

Who, then, oppose Torrens legislation?

The selfish few. Against these, with their power as obstructions to realty reform, common sense, public interest, and time will not wait very much longer for the proper adjustment to Torrens action which they impede. They may delay but they cannot permanently oppose or destroy Torrens

The Torrens engine

progress. These agencies suggest — with one difference — the famous tale of Erckmann-Chatrian, the patriots of French Alsace-Lorraine. In the lovely valleys of the Rhine region came the day of the introduction of the locomotive. Against this innovation, which would also bring in its train the evils of contact with the outside world, set themselves the giant blacksmith Daniel Rock and his brawny sons. They would oppose the engine in some mighty way before it deflowered their fair hill valley. The day arrived for the first train. The hillsides were crowded to see the train and the catastrophe threatened by the stalwart smith and his sons. The whistle sounded in the tunnel of the hillside. Master Rock and his two sons stepped out from the tunnel opening with great lances that explained the fires that had long nightly flickered from the forge and lightened the fields and the forests of the surrounding slopes. Three men, three lances of wrought iron, three determinations born of purest patriotism, it is true, without sordid interest or personal advantage, but with thought of public weal, set against a principle of progress. And the engine, powerful and rapid, passed over the rails and annihilated the living obstructions. The Torrens engine will do likewise.

THE END

# APPENDIX I

DATES of the original passing of Torrens Acts or of similar legislation in various countries and States are seen in the following table. There have been many repeals and amendments. No country or State has abolished the system when once adopted, but has continued to perfect its operation.

1858. South Australia.
1858. British Honduras.
1860. Vancouver (consolidated with British Columbia in 1866).
1861. Queensland.
1862. Tasmania.
1862. New South Wales.
1862. Victoria.
1862, 1875, 1897. England.
1865, 1891. Ireland.
1870. New Zealand.
1871. British Columbia.
1874. Western Australia.
1875, 1897. Wales.
1876. Fiji.
1880. British Guiana.
1885. Ontario.
1885. Manitoba.
1886. Canadian Northwest Territories (Assiniboia, South Alberta, North Alberta, West Saskatchewan, East Saskatchewan).
1886. Leeward Islands.
1888. Jamaica.
1889. British New Guinea.
1890. Cyprus.
1895. Illinois.
1896. Ohio.
1897. California.
1898. Massachusetts.
1901. Minnesota.
1901. Oregon.
1902. Philippine Islands.
1903. Colorado.
1903. Hawaii.
1904. Nova Scotia.
1906. Alberta (North and South Alberta).
1906. Saskatchewan (Assiniboia, West and East Saskatchewan).
1907. Washington.
1908. New York.
1913. North Carolina.
1914. Mississippi.

Tobago, Trinidad, and Turks and Caicos Islands have also adopted title registration.

For an outline of European registration, cf. chapter II. As shown in the masterly history of the Torrens idea by Henry Pegram, Austria had title registration in 1369, its modern code dating from 1811. Hungary and Bohemia possessed a title system centuries ago, the modern Hungarian method

having been adopted in 1855. Austria-Hungary created the system for the Empire in 1874. Germany had title registration before 1440 and made it the law of the Empire in 1900. Denmark started the system of registration as early as 1550, and, with Norway and Sweden, has what is known as the "Scandinavian System." Switzerland had title registration early in the seventeenth century. In the United States a number of States are planning Torrens legislation.

# APPENDIX II

THE importance of the Torrens System is seen in the totals of real-estate values in this country to which such a system on adoption by the various States would be applicable. This is shown by the following table.

In 1912 the value of real property and improvements taxed in the United States was $98,363,813,569. Real property and improvements exempt from taxation were valued at $12,312,519,502. This total of $110,676,333,071 was geographically distributed thus: —

| | |
|---|---|
| *New England* | $7,248,043,478 |
| Maine | 485,858,919 |
| New Hampshire | 335,212,237 |
| Vermont | 255,994,278 |
| Massachusetts | 4,118,215,738 |
| Rhode Island | 600,747,009 |
| Connecticut | 1,452,015,297 |
| *Middle Atlantic* | 30,315,701,320 |
| New York | 16,910,262,952 |
| New Jersey | 3,856,914,601 |
| Pennsylvania | 9,548,523,767 |
| *East North Central* | 23,748,446,047 |
| Ohio | 5,173,708,410 |
| Indiana | 2,957,867,352 |
| Illinois | 10,046,319,512 |
| Michigan | 3,067,378,894 |
| Wisconsin | 4,487,725,258 |
| *West North Central* | 18,690,288,308 |
| Minnesota | 3,391,615,408 |
| Iowa | 5,111,230,343 |
| Missouri | 3,264,058,859 |
| North Dakota | 1,261,388,140 |
| South Dakota | 639,661,792 |
| Nebraska | 2,316,850,464 |
| Kansas | 2,705,483,302 |
| *South Atlantic* | 7,536,324,781 |
| Delaware | 172,148,377 |
| Maryland | 1,345,483,922 |
| District of Columbia | 902,023,891 |
| Virginia | 1,176,103,685 |
| *South Atlantic — continued* | |
| West Virginia | $1,399,189,713 |
| North Carolina | 700,300,022 |
| South Carolina | 506,607,276 |
| Georgia | 904,983,602 |
| Florida | 429,484,293 |
| *East South Central* | 3,381,631,974 |
| Kentucky | 1,139,433,836 |
| Tennessee | 831,914,027 |
| Alabama | 933,661,266 |
| Mississippi | 476,622,845 |
| *West South Central* | 8,666,784,508 |
| Arkansas | 890,976,538 |
| Louisiana | 1,028,988,795 |
| Oklahoma | 3,138,755,256 |
| Texas | 3,608,063,739 |
| *Mountain* | 2,799,845,396 |
| Montana | 450,271,730 |
| Idaho | 143,201,061 |
| Wyoming | 90,280,515 |
| Colorado | 1,223,511,598 |
| New Mexico | 147,056,680 |
| Arizona | 183,408,911 |
| Utah | 376,008,261 |
| Nevada | 186,106,640 |
| *Pacific* | 8,289,267,259 |
| Washington | 1,888,850,453 |
| Oregon | 1,163,594,445 |
| California | 5,236,822,361 |

# APPENDIX III

SPEAKING of the New York Torrens Law, Register J. J. Hopper says: —

The Torrens System is made entirely voluntary so that the transition from the old method to the new may be gradual and not forced. It is the plan, however, that ultimately all titles shall be registered and the system become general. It is plain that this can never be done if titles can be withdrawn according to the whims of owners, or, what is worse, under pressure by enemies of the system through the exercise of control over mortgage loans. This weakening of the law by indirect methods is an old device, and wherever withdrawals have been permitted the law has been a failure, as it is in New York. This feature was denounced by Sir Robert Torrens himself as being "antagonistic to the principle of registration of titles." He quotes with approval in his Essay of 1882: "I think when a title is once on the register it should, in the public interest, always stay there, otherwise owners are exposed to unfair pressure."

Further summary of the advantages of a real Torrens law is seen in the following statements: —

The certificate of registration is by law conclusive and indefeasible against the whole world. In theory, therefore, no assurance fund is needed so far as holders of certificates are concerned. On the other hand, the certificate effectually cuts off the rights of any person not named in the certificate, even though those rights are concededly just. Natural justice demands that compensation should be given in such cases. Furthermore, mistakes of clerks or officials in transferring certificates may result in overlapping rights and cause a loss to a holder. To take the burden of loss caused by the operation of the system from the individual and distribute it over the whole class of those who benefit by the system, is the purpose of the assurance fund. The establishment of such a fund is simply the application of the modern principle of insurance. In all the States having Torrens Laws one tenth of one per cent (or $1 for each $1000) of the value of the land must be paid into the public treasury at the time of original registration. This small premium is paid but once, and not only protects the first holder of the certificate but all future holders and encumbrancers for all time. In the present New York Law the fundamental error was made that

payment into the fund was made optional on the part of the applicant. This is not only grossly unfair, but it has made the assurance fund the laughing-stock of conveyancers. New York County has contributed just $18.30 to the fund in seven years.

In the case of the Torrens Law, —

the New York procedure is bad in that it makes every attempt at registration a lawsuit. . . . The proceedings should be shortened and simplified.

Looking to this object amendments have been prepared by which the examination of titles is made official by placing it in the register's office; the examiner is made a referee of the court; registration is made permanent; contribution to the assurance fund is made compulsory, and a simple direct proceeding, modeled after the Massachusetts Law, is substituted for the present cumbersome law action. These amendments are intended to put into the New York Law the principles which have made the Torrens Law so successful in other places. They agree substantially with the provisions of the model act approved by the American Bar Association and favorably reported to the conference of the Commissioners on Uniform State Laws which met at Washington, D.C., in October, 1914. These amendments were bitterly opposed in many ways or nullified by the introduction of other amendments. The issue was not decided, reference to a committee having arrested the amendments passed by the Senate in different form. The question thus comes up at the next session of the Legislature.

Torrens benefits are summed up by the Register thus: —

The Torrens method does away with private conveyancing and substitutes public registration. It eliminates all subsequent searching and examining of titles, leaving no room for private gain or corporate dividends. This removal from the sphere of private action must operate from the beginning and apply to those initial steps which relate to matters preliminary to registration. By the use of the public locality plant, the cost of the initial registration can be so reduced that Torrens certificates can meet the title company policies on the first transactions in fair competition. At the same time, the examiner's fees paid into the city treasury will repay the cost of preparing the locality index and contribute largely toward reducing the present deficit in office expenses.

The greatest fruits of the Torrens System are to be gathered in the

future. In money, the annual drain of four or five millions of dollars now paid to title companies and conveyancers — which amounts to a direct tax on real estate — will be relieved. In time, the weeks and sometimes months now required to make transfers will be reduced, so that a transfer may be made in a day or even in an hour. In commercial convenience, real property will take its place among easily negotiable assets and thus increase land value by giving it the benefit of a broader investment field.

Everett V. Abbot, the well-known authority on realty jurisprudence, in Torrens discussion says this: —

The title companies are really more efficient in accomplishing the substantial results which property owners want than the new system. They cannot, of course, grant indefeasible titles; but, except in the few cases in which they overlook a possessory right as distinguished from a mere money claim, such as a lien, their guarantees are as good a protection for all practical purposes as indefeasible certificates.

On the whole, title companies have been a benefit to the real-estate community and not a very serious detriment to the legal profession. Their fees are considerably less than those which lawyers used to charge upon the examination of title, and consequently they have facilitated transfers and have thus increased the volume of business. Their plants are more complete than any lawyer could hope to have, and their results are therefore more accurate. Their legal opinions are backed with a substantial guarantee, and are, therefore, a better protection to the property owner than a lawyer's certificate and abstract of title. They have been reasonably fair and liberal with the legal profession, and generally, except perhaps in the case of a few attorneys who had large real-estate practice which was invaded by the title companies, lawyers have not objected to their activities.

The phase of transactions with the title companies which produces the most complications is that they are continually presented with the necessity of acting in two inconsistent capacities. In some respects they assume the function, which lawyers formerly fulfilled, of being legal advisers to their clients; but at the same time they go further than the lawyers — they guarantee titles. This produces a conflict of interest with duty, and, in spite of good intentions, duty sometimes yields to interest.

For example, it is the duty of the title companies to preserve inviolate the private information which is conveyed to them when they receive titles for examination, because it is given to them confidentially. This information, however, is very valuable in their general business, and the conviction is widespread that they use it for their own benefit. The most important information which they receive is, of course,

knowledge of the actual price paid for the property, and it is much to be feared, as it is certainly widely believed, that they sometimes disclose it when it is their duty to keep it secret.

Again, title companies are rather capricious in insuring against defects in title. Sometimes they will insure against a defect which is really serious, and then again they will refuse to insure when the defect involves substantially no risk at all. Quite frequently they refuse to insure against defects which do not render the title legally unmarketable. When a title is marketable, however, the refusal to certify it may cause serious injury to the property owner. The refusal is a detriment to the title itself. It creates a false impression as to the validity of the title, and this produces an appreciable diminution in the salable value of the property. In these cases, just so far as the title companies assume to act as advisers, it is their duty to inform their clients that the title is marketable, although as guarantors it might be against their interest to assume the risk of the possible defect.

Laymen sometimes go to the title companies without retaining counsel, and at such times they believe, and the title companies allow them to believe, that they receive the same kind of advice that they would receive if they hired a lawyer. In view of the conflict between the duty of the companies and their interest, however, a conflict which may arise at the most unexpected moments, this is not always true, and the failure to retain a lawyer is quite unwise. The companies are well intentioned and do a valuable service, but they need supervision.

The truth is, in my opinion, that we can have a system of land-title registration so much better than anything which has yet been tried that nobody, least of all so conservative a body as the real-estate owners and their lawyers, will believe it to be possible.

In an address (1915) before the New York State League of Savings and Loan Associations, whose two hundred and fifty-one associations have gone on record unequivocally in favor of the Torrens Registration System, Register J. J. Hopper said: —

The Torrens System of land-title registration is especially beneficial to investing property owners whose interests are peculiarly represented by the savings and loan associations throughout the country. In the case of the individual householder whose savings are often invested in a single property, the payment of lawyers' fees or title company fees (or both) upon the purchase, or whenever a mortgage must be adjusted, is usually a serious burden. In the city of New York the situation is peculiar in that, through the ownership of stock and the sharing of commissions, there is an interlocking of interests among the larger

landowners, real-estate brokers, conveyancing lawyers, the money-lending institutions, and the title-examining companies. These conditions explain the fact that savings and loan associations have universally and earnestly gone on record in favor of the Torrens System, while institutions like the Real Estate Board of New York, the interests of whose members are closely allied to those of the title companies, have been conservatively inclined or even hostile to proposed laws that would actually bring about the adoption of a pure Torrens method.

Unfortunately the interests allied with the title companies in this State have been able to exert a powerful influence in all legislation relating to real property, and while they were unable to defeat the passage of a Torrens Law, nevertheless, acting through agents who posed as friends of the reform, many innovations were inserted which were radical departures from the original Torrens plan and antagonistic to its principle. The New York Torrens Law passed in 1908 was so drawn that — to use the phraseology of Judge Davis of Massachusetts — it would do the title companies no harm and incidentally would apparently not do anybody any good.

The history of the progress of the Torrens System in the United States is a story of the struggle to overcome fictitious obstructions invented and solemnly defended by professional conveyancers who find a source of profit in the retention of existing cumbersome and expensive methods of searching titles. The committee on the Torrens System representing the American Bar Association, in their report to the twenty-fourth annual conference of Commissioners on Uniform State Laws, at Washington, D.C., in October, 1914, have called striking attention to this conflict. The report says: —

> "Every act passed in the United States bears on its face the scars of desperate conflict. It is doubtful whether any legislation has ever been assailed with more bitterness or greater persistency than this; and unfortunately its antagonists have generally succeeded in marring the act even when they have been unable to defeat it."

This is what happened in New York. The title companies, who are the natural enemies of the system, were placed in practical control of the machinery for the examination of titles which is preliminary to registration, so that the desire of an individual to register his title is throttled in its inception by the burden of the expense of initial registration.

In his address as president at the twenty-fifth annual conference (1915) of the Commissioners on Uniform State Laws, Charles Thaddeus Terry said: —

Eleven States have already adopted the Torrens System for their own, and a majority of them are States which are recognized to be exemplars, at least in their conception of excellence in statutory law. That fact may be said to furnish a sufficient demonstration that the Torrens System has been accepted in our country as a desirable, legal process, and points unalterably to the need of immediate attention and effective action by the conference.

Suppose there be added to this an argument drawn from the operation of the system which should show that certificates of registration, under the plan, were calculated to take their place among the negotiable documents of title with which we have, for so many years, been dealing, in respect of personal property — as witness our Negotiable Instruments Act, our Warehouse Receipts Act, our Bills of Lading Act, our Certificate of Stock Act, and our Sales of Goods Acts. If the adoption of a Uniform Torrens Act were to bring about, in whole or in part, something of the same fluidity or negotiability of land, as has been brought about in the case of personal property by the Uniform Acts just enumerated, then indeed this conference would be required to extend the principle, heretofore approved and tested, to this new subject, and be driven by every consideration of its purpose, its duty, and its desire, to the enthusiastic support of uniformity in respect of an adequate Torrens Registration Act.

The arguments against the adoption of the Torrens System will be found to rest largely upon the claim that the many decades of use of the old methods of dealing with land titles, negative any possible virtue in the new. There are, of course, other arguments advanced against the system, and dealing with particular elements, but the main argument as it is also the general argument, is drawn from the antiquity of the old law and the old custom.

. . . . . .

Tested by individual opinion of those whose opinion is entitled to grave consideration and persuasive force, we are driven to regard the Torrens System as not only expedient, but as, in the highest degree, beneficial and desirable. Thus, Mr. Justice Hughes, now of the United States Supreme Court, when Governor of New York, set the stamp of his approval upon the system by signing a bill embodying it, after thorough-going debate and investigation in which those arrayed on both sides of the question had presented their arguments at their best. It is worthy of note that the adoption of the law in New York came only after such a course had been recommended by a carefully selected commission of amply qualified memberships which had sifted the factors pro and con, viewed the subject from all sides, both as a matter of law and of fact.

. . . . . .

Again, if the test of the constitutionality of such a law be applied, the lawyer's mind is convinced of the soundness of the system. In view of the decisions beginning with the careful analytical and clearly phrased opinion of Mr. Justice Holmes, now sitting on the bench of the United States Supreme Court, with that other notable exponent of the system just mentioned, Mr. Justice Hughes, and ending with a mass of decisions to the same effect in other States, the system may be regarded as having secured a clear title to constitutional sanction.

Tested by business beneficence, the Torrens System would seem to satisfy, to the full, the most exacting requirements. Ease in the disposition of property, convenience of transfer, availability of assets and values for commercial needs and mercantile contingencies; all these attributes would seem to fairly attach to land under the ideal Torrens Law. And furthermore, in this connection, it is more than a legitimate query, it is a query which conveys with it the undoubted answer — whether under this system properly perfected the certificate showing the ownership of a piece of land might not be made as readily transferable from hand to hand, from bearer to bearer, as a warehouse receipt or a bill of lading, and take its position as one of the current documents of title with which the conference has been almost continuously dealing during the past twenty-five years, and with reference to which it has been able to formulate acts acceptable to the States, and effective in practice.

Other arguments and decisions against the system, relating to particular features of it, do not commend themselves to experience, on the question of fact, nor to sound principles of interpretation, as a matter of law. The points which are had in mind in this connection are, among others, the following: The substitution of security for insecurity; the reduction of the cost of conveyancing; the elimination of obscurity and complication; the quieting of titles; and the reduction of litigation to a minimum. It is suggested that the questions here involved have been resolved in experience, as a matter of practice, and in principle, as a matter of theory, in favor of the Torrens System.

At this National Conference of Commissioners on Uniform State Laws, held at Salt Lake City, a uniform law on land registration was drawn and adopted.

By section 29, of article VIII, of the new Constitution, the Constitutional Convention of the State of New York has set the seal of its approval upon the Torrens System of land title registration. Amendment of the present New York Torrens Law will be proposed in the 1916 session of the legislature.

# INDEX

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